

1 [Tobacco Sales Permit.]

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3 **Ordinance amending the San Francisco Health Code by adding Article 19H to require a**
4 **permit for tobacco sales and amending the San Francisco Business and Tax**
5 **Regulations Code by adding section 249.16 to set the fee for the tobacco sales permit.**

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are *strikethrough italics Times New Roman*.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. The San Francisco Health Code is hereby amended by adding Article 19H,
11 to read as follows:

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13 **ARTICLE 19H. PERMITS FOR THE SALE OF TOBACCO.**

14 **SEC. 1009.50. FINDINGS.** *The Board of Supervisors of the City and County of San*
15 *Francisco hereby finds and declares as follows:*

16 *A. State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking*
17 *paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors.*
18 *(California Penal Code section 308.) State law also prohibits public school students from smoking or*
19 *using tobacco products while on campus, attending school-sponsored activities, or under the*
20 *supervision or control of school district employees. (California Education Code section 48901(a).) In*
21 *addition, state law prohibits smoking in enclosed places of employment (California Labor Code section*
22 *6404.5). Moreover, San Francisco has adopted ordinances that ban cigarette vending machines in the*
23 *City (San Francisco Health Code section 1009.1), prohibit the self-service merchandising of tobacco*
24 *products, except in places to which access by minors is prohibited by law (San Francisco Police Code*

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1 section 4600.3), and prohibit smoking in enclosed areas and sports stadiums (San Francisco Health
2 Code section 1009.22).

3 B. Despite these state and local restrictions, minors continue to obtain cigarettes and other
4 tobacco products at alarming rates. Children under the age of 18 consume 924 million packs of
5 cigarettes annually in the United States. Over 29 million packs of cigarettes are sold to California
6 children annually. More than 60 percent of all smokers begin smoking by the age of 14, and 90 percent
7 begin by age 19.

8 C. In a 2002 California youth buying survey, 19.3 percent of retailers surveyed unlawfully sold
9 tobacco products to minors compared to 17.1 percent in 2001.

10 D. California's rate of illegal tobacco sales to minors is steadily increasing. In 2002 the rate
11 was 19.3 percent, up from 17.1 percent in 2001, and 12.8 percent in 2000.

12 E. The California Department of Health Services reports that 26.7 percent of California
13 adolescents believe it is easy to buy a pack of cigarettes.

14 F. Despite active enforcement by the San Francisco Police Department, a significant number of
15 retailers continue to sell tobacco illegally to minors. The rate of illegal tobacco sales documented by
16 the Police Department during 2001 was 25.3 percent and 20.2 percent in 2002.

17 G. In a youth decoy operation conducted by the Police Department, 50 percent of the 12 bars
18 visited illegally sold tobacco to a minor.

19 H. San Francisco has a substantial interest in promoting compliance with State laws
20 prohibiting sales of cigarettes and tobacco products to minors, in promoting compliance with laws
21 intended to discourage the purchase of tobacco products by minors, and in protecting our children
22 from illegally obtained tobacco.

23 I. Requiring tobacco vendors to obtain a tobacco sales permit will not unduly burden legitimate
24 business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It
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1 will, however, allow the City to regulate those establishments selling tobacco products to ensure that
2 they comply with federal, state, and local tobacco laws.

3 J. This Article is designed to promote the public interest in ensuring that San Francisco
4 businesses operate in compliance with applicable laws regulating tobacco, including laws prohibiting
5 the sale of tobacco to minors and laws regulating smoking.

6 **SEC. 1009.51. DEFINITIONS.** The following words and phrases, whenever used in this
7 Article, shall be construed as defined in this section. Words in the singular include the plural and
8 words in the plural include the singular. Words in the present tense include the future.

9 (a) "Department" means the Department of Public Health.

10 (b) "Director" means the Director of Health or his or her designee.

11 (c) "Establishment" means any store, stand, booth, concession or any other enterprise that
12 engages in the retail sale of tobacco products.

13 (d) "Permittee" means a person who has obtained a tobacco sales permit for a specific
14 location pursuant to this Article.

15 (e) "Person" means any individual, partnership, cooperative association, private corporation,
16 personal representative, receiver, trustee, assignee, or any other legal entity.

17 (f) "Tobacco products" means tobacco and any substance containing tobacco leaf, including
18 but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any
19 other preparation of tobacco, including the cigarettes commonly known as bidis.

20 (g) "Tobacco sales" means sales, or any offer to sell or exchange, for any form of
21 consideration, tobacco products to any person by any person who operates an establishment.

22 "Tobacco sales" includes any display of tobacco products.

23 **SEC. 1009.52. REQUIREMENT FOR TOBACCO SALES PERMIT.** It shall be unlawful for
24 any person to engage in tobacco sales, or to allow tobacco sales, in any establishment without first
25 obtaining and maintaining a valid tobacco sales permit from the Department for each location where

1 tobacco sales are conducted. Nothing in this Article shall be construed to grant any person obtaining
2 and maintaining a tobacco sales permit any status or right other than the right to act as a tobacco
3 retailer at the location identified on the face of the permit. The obtaining of a permit does not in and of
4 itself transform a business into a retail tobacco or wholesale shop within the meaning of California
5 Labor Code section 6404.5. It shall be unlawful for any person to engage in tobacco sales, or to allow
6 tobacco sales, at an establishment for which the Director has suspended the tobacco sales while the
7 period of suspension remains in effect. It shall be unlawful for any person to engage in or allow
8 tobacco sales at an establishment for which the Director has revoked the tobacco sales permit for three
9 years from the date of revocation. Permits are valid as long as the annual license fees are paid.

10 **SEC. 1009.53. APPLICATION PROCEDURE; INSPECTION OF PREMISES; ISSUANCE**
11 **AND DISPLAY OF PERMIT.** (a) Application. An application for a tobacco sales permit shall be
12 submitted in the name of the person(s) proposing to engage in the sale of tobacco products and shall be
13 signed by each person or an authorized agent thereof. The application shall be accompanied by the
14 appropriate fees as described in section 35 of the San Francisco Business and Tax Regulations Code.
15 A separate application is required for each location where tobacco sales are to be conducted. All
16 applications shall be submitted on a form supplied by the Department and shall contain the following
17 information:

- 18 1. The name, address, and telephone number of the applicant;
- 19 2. The establishment name, address, and telephone number for each location for which
20 a tobacco sales permit is sought;
- 21 3. Such other information as the Director deems appropriate, including the applicant's
22 type of business, and whether the applicant has previously been issued a permit under this Article that
23 is, or was at any time, suspended or revoked.

24 (b) Inspection by Director. Upon receipt of a completed application and fees, the Director may
25 inspect the location at which tobacco sales are to be permitted. The Director may also ask the

1 applicant to provide additional information that is reasonably related to the determination whether a
2 permit may issue.

3 (c) Issuance of Permit. If the Director is satisfied that the applicant has met the requirements
4 of this Article and that issuance of the permit will not violate any law, the Department shall issue the
5 permit. No permit shall issue if the Director finds that the applicant is in violation of San Francisco
6 Health Code section 1009.1 (regulating cigarette vending machines) or San Francisco Police Code
7 section 4600.3 (regulating the self-service merchandising of tobacco products). No permit shall issue if
8 the application is incomplete or inaccurate.

9 (d) Display of Permit. Each permittee shall display the permit prominently at each location
10 where tobacco sales occur. No permit that has been suspended shall be displayed during the period of
11 suspension. A permit that has been revoked is void and may not be displayed.

12 **SEC. 1009.54. FEES FOR PERMIT.** The Department shall charge every applicant for a
13 tobacco sales permit a non-refundable application fee for the initial inspection and processing of the
14 application and an annual license fee sufficient to cover the costs of annual inspections, as determined
15 by the Director. The application and processing fee is described in section 35 of the San Francisco
16 Business and Tax Regulations Code. The annual fee is listed in section 249.16 of the San Francisco
17 Business and Tax Regulations Code.

18 **SEC. 1009.55. PERMIT MAY NOT BE TRANSFERRED TO NEW PERSONS OR**
19 **LOCATIONS.** As described in section 77 of the San Francisco Business and Tax Regulations Code,
20 tobacco permits may not be transferred or assigned.

21 **SEC. 1009.56. ENFORCEMENT AND INSPECTION.** The Director may enforce all
22 provisions of this Article. Specific grounds for enforcement are set forth in sections 1009.57 through
23 1009.65. Upon presentation of proper credentials, the Director may enter and inspect at any time
24 during regular business hours any establishment that is engaging in tobacco sales, or is suspected by
25 the Director of engaging in such sales.

1 **SEC. 1009.57. CONDUCT VIOLATING SAN FRANCISCO HEALTH CODE SECTION**

2 **1009.1 (REGULATING CIGARETTE VENDING MACHINES).** (a) Upon a decision by the
3 Director that the permittee or the permittee's agent or employee has engaged in any conduct that
4 violates San Francisco Health Code section 1009.1 (regulating cigarette vending machines), the
5 Director may suspend a tobacco sales permit as set forth in section 1009.66, impose administrative
6 penalties as set forth in section 1009.67, or both suspend the permit and impose administrative
7 penalties.

8 (b) The Director shall commence enforcement of this section by serving either a notice of
9 correction under section 1009.68 of this Article or a notice of initial determination under section
10 1009.69 of this Article.

11 **SEC.1009.58. CONDUCT VIOLATING SAN FRANCISCO POLICE CODE SECTION**

12 **4600.3 (REGULATING THE SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS).**

13 (a) Upon a decision by the Director that the permittee or the permittee's agent or employee has
14 engaged in any conduct that violates San Francisco Police Code section 4600.3 (regulating the self-
15 service merchandising of tobacco products), the Director may suspend a tobacco sales permit as set
16 forth in section 1009.66, impose administrative penalties as set forth in section 1009.67, or both
17 suspend the permit and impose administrative penalties.

18 (b) The Director shall commence enforcement of this section by serving either a notice of
19 correction under section 1009.68 of this Article or a notice of initial determination under section
20 1009.69 of this Article.

21 **SEC. 1009.59. CONDUCT VIOLATING SAN FRANCISCO HEALTH CODE SECTION**

22 **1009.22 (PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS).** (a)

23 Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in
24 any conduct that violates San Francisco Health Code section 1009.22 (prohibiting smoking in enclosed
25 areas and sports stadiums), the Director may suspend a tobacco sales permit as set forth in section

1 1009.66, impose administrative penalties as set forth in section 1009.67, or both suspend the permit
2 and impose administrative penalties.

3 (b) The Director shall commence enforcement of this section by serving either a notice of
4 correction under section 1009.68 of this Article or a notice of initial determination under section
5 1009.69 of this Article.

6 **SEC. 1009.61. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION 308**
7 **(PROHIBITING THE SALE OF TOBACCO TO MINORS).** (a) Upon a decision by the Director
8 that the permittee or the permittee's agent or employee has engaged in any conduct that violates
9 California Penal Code section 308 (prohibiting the sale of tobacco to minors), the Director may
10 suspend a tobacco sales permit as set forth in section 1009.66.

11 (b) The Director shall commence enforcement of this section by serving a notice of initial
12 determination in accordance with section 1009.69 of this Article.

13 **SEC. 1009.62. CONDUCT VIOLATING CALIFORNIA LABOR CODE SECTION 6404.5**
14 **(PROHIBITING SMOKING IN ENCLOSED PLACES OF EMPLOYMENT).** (a) Upon a decision
15 by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that
16 violates California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment),
17 the Director may suspend a tobacco sales permit as set forth in section 1009.66.

18 (b) The Director shall commence enforcement of this section by serving a notice of initial
19 determination in accordance with section 1009.69 of this Article.

20 **SEC. 1009.63. FRAUDULENT PERMIT APPLICATIONS.** (a) Upon a decision by the
21 Director that the permittee or the permittee's agent or employee has obtained a tobacco sales permit
22 from the Department by fraudulent or willful misrepresentation, the Director may suspend a tobacco
23 sales permit as set forth in section 1009.66.

1 (b) Upon a final decision by the Director that the permittee or the permittee's agent or
2 employee has obtained a tobacco sales permit from the Department by fraudulent or willful
3 misrepresentation, the Director may impose administrative penalties as set forth in section 1009.67.

4 (c) Upon a final decision by the Director that the permittee or the permittee's agent or
5 employee has obtained a tobacco sales permit from the Department by fraudulent or willful
6 misrepresentation, the Director may revoke a tobacco sales permit.

7 (d) Upon a final decision by the Director that the permittee or the permittee's agent or
8 employee has obtained a tobacco sales permit from the Department by fraudulent or willful
9 misrepresentation, the Director may impose administrative penalties in addition to either suspending or
10 revoking the tobacco sales permit.

11 (e) The Director shall commence enforcement of this section by serving a notice of initial
12 determination in accordance with section 1009.69 of this Article.

13 (f) Any person who obtained a permit by fraud or misrepresentation may be prosecuted for
14 either an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100)
15 for a first violation, two hundred dollars (\$200) for a second violation within one year, and five
16 hundred dollars (\$500) for a third and for each subsequent violation within one year.

17 **SEC. 1009.64. SELLING TOBACCO WITHOUT A PERMIT.** (a) Upon a final decision by
18 the Director that any person has engaged in the sale of tobacco at any establishment without a permit,
19 the Director may impose administrative penalties as set forth in section 1009.67.

20 (b) The Director shall commence enforcement of this section by serving a notice of initial
21 determination in accordance with section 1009.69 of this Article. This Notice of Initial Determination
22 may require that all tobacco sales cease and may impose an administrative penalty.

23 (c) The City Attorney may maintain an action for injunction to restrain any person from selling
24 tobacco without a valid tobacco sales permit. In any such action, the City Attorney may seek civil
25 penalties and may seek a judicial determination that a person must pay any administrative penalties.

1 The person against whom an injunction issues also shall be liable for the costs and attorney's fees
2 incurred by the City and County of San Francisco in bringing a civil action to enforce the provisions of
3 this section.

4 (d) Any person who engages in tobacco sales without the required permit may be prosecuted
5 for either an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars
6 (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five
7 hundred dollars (\$500) for a third and for each subsequent violation within one year.

8 **SEC. 1009.65. OTHER ENFORCEMENT.** (a) Violations of this Article are hereby declared
9 to be public nuisances and may be enforced as set forth in section 596 of the San Francisco Health
10 Code.

11 (b) Violations of this Article are hereby declared to be unfair business practices and are
12 presumed to damage each and every resident of the community in which the business operates.

13 (c) In addition to other remedies provided by this Article or by other law, any violation of this
14 ordinance may be remedied by a civil action brought by the City Attorney, including, for example,
15 administrative or judicial abatement proceedings, civil or criminal code enforcement proceedings, and
16 suits for injunctive relief. The person against whom a successful civil action is brought shall be liable
17 for the costs and attorney's fees incurred by the City and County of San Francisco.

18 **SEC. 1009.66. TIME PERIOD OF SUSPENSION OF PERMIT.** When this Article allows
19 the Director to suspend a permit, the following sanctions may be imposed:

20 (a) The Director may suspend the permit for a maximum of 90 days for the first violation.

21 (b) If a second violation occurs within twelve months of the first violation, the Director may
22 suspend the permit for a maximum of six months.

23 (c) Upon the third, and each subsequent violation, if within twelve months of the prior
24 violation, the Director may suspend the permit for a maximum of one year.

25 (d) Each suspension is an independent sanction and is served consecutively.

1 **SEC. 1009.67. ADMINISTRATIVE PENALTY.** *When this Article allows the Director to*
2 *impose an administrative penalty, the Director may assess an administrative penalty not exceeding one*
3 *hundred dollars (\$100) for a first violation; not exceeding two hundred dollars (\$200) for a second*
4 *violation; and not exceeding five hundred dollars (\$500) for the third and each subsequent violation.*
5 *For purposes of administrative penalties, each day that tobacco sales occur without a permit shall*
6 *constitute a separate violation.*

7 **SEC. 1009.68. NOTICE OF CORRECTION.** *When the Director commences an enforcement*
8 *action with a notice of correction, the Director shall serve the notice on the permittee or the permittee's*
9 *agent. The notice shall state that the Department has determined that a violation may have occurred*
10 *and that reasonable grounds exist to support this determination. The notice may require corrective*
11 *action immediately or upon a schedule required by the Director. The Director may require the*
12 *permittee to post the notice of correction at the location where the Department alleges that violations*
13 *have occurred. If the permittee fails to obey a notice of correction, the Director may serve a notice of*
14 *initial determination in accordance with section 1009.69 of this Article.*

15 **SEC. 1009.69. NOTICE OF INITIAL DETERMINATION.** *When the Director sends a notice*
16 *of initial determination, the Director shall serve the notice on the permittee or the permittee's agent.*
17 *The Notice of Initial Determination may require that all tobacco sales cease. The notice shall state the*
18 *basis for the Department's initial determination, including the alleged acts or failures to act that*
19 *constitute a basis for suspension, revocation, and/or an administrative penalty as provided in this*
20 *Article. After affording the permittee an opportunity to provide information contesting the initial*
21 *determination, the Director shall issue a decision, including an order imposing an administrative*
22 *penalty, if any. Copies of this decision and related order(s) shall be served upon the party served with*
23 *the notice of initial determination. If no notice of appeal of the Director's decision is filed within the*
24 *appropriate period, the decision shall be deemed final and shall be effective 15 days after it was issued.*

1 **SEC. 1009.71. PAYMENT OF ADMINISTRATIVE PENALTIES.** *Unless a timely notice of*
2 *appeal of the Department's final decision is filed, the Department may require payment of any*
3 *administrative penalty within 30 days of the Director's decision. The Department shall make a written*
4 *demand for payment by personal delivery or certified mailed notice to the person sanctioned. Any*
5 *administrative penalty assessed and received in an action brought under this Article shall be paid to*
6 *the Treasurer of the City and County of San Francisco. The person against whom an administrative*
7 *penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County*
8 *of San Francisco in bringing any civil action to enforce the provisions of this section, including*
9 *obtaining a court order requiring payment of the administrative penalty.*

10 **SEC. 1009.72. APPEALS TO BOARD OF APPEALS.** *(a) Right of Appeal. The final*
11 *decision of the Director to deny, suspend, or revoke a permit, or to impose administrative sanctions, as*
12 *provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article I*
13 *of the San Francisco Business and Tax Regulations Code. An appeal shall stay the action of the*
14 *Director.*

15 *(b) Hearing. The procedure and requirements governing an appeal to the Board of Appeals*
16 *shall be as specified in Article I of the San Francisco Business and Tax Regulations Code.*

17 **SEC. 1009.73. OTHER REMEDIES.** *Nothing in this Article shall affect any other remedies*
18 *which are available to the City and County under any law, including (1) San Francisco Health Code*
19 *section 1009.1 (regulating cigarette vending machines); (2) San Francisco Police Code section 4600.3*
20 *(regulating the self-service merchandising of tobacco products); (3) San Francisco Health Code*
21 *section 1009.22 (prohibiting smoking in enclosed areas and sports stadiums); (4) California Penal Code*
22 *section 308 (regulating sales of tobacco products to minors), and (5) California Labor Code section*
23 *6404.5 (prohibiting smoking in enclosed places of employment).*

1 **SEC. 1009.74. AUTHORITY TO ADOPT RULES AND REGULATIONS.** *The Director may*
2 *issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this*
3 *Article.*

4 **SEC. 1009.75. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL**
5 **WELFARE.** *In undertaking the enforcement of this ordinance, the City is assuming an undertaking*
6 *only to promote the general welfare. It is not assuming, nor is it imposing on its officers and*
7 *employees, an obligation for breach of which it is liable in money damages to any person who claims*
8 *that such breach proximately caused injury.*

9 **SEC. 1009.76. PREEMPTION.** *In adopting this Article, the Board of Supervisors does not*
10 *intend to regulate or affect the rights or authority of the State to do those things that are required,*
11 *directed or expressly authorized by federal or state law. Further, in adopting this Article, the Board of*
12 *Supervisors does not intend to prohibit that which is prohibited by federal or state law.*

13 **SEC. 1009.77. SEVERABILITY.** *In the event that a court or agency of competent jurisdiction*
14 *holds that federal or state law, rule or regulation invalidates any clause, sentence, paragraph or*
15 *section of this Article or the application thereof to any person or circumstances, it is the intent of the*
16 *Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that*
17 *the remainder of this Article shall remain in effect.*

18 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
19 by adding section 249.16, to read as follows:

20 **SEC. 249.16. TOBACCO SALES PERMIT FEE.** *Every person, firm or corporation engaged*
21 *in tobacco sales shall pay an annual permit fee of \$300 to the Tax Collector.*

22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: _____
25 Ann Alpers
Deputy City Attorney