

1 [Health, Business and Tax Regulations Codes - Tobacco Sales Permits and Associated Fees]

2

3 **Ordinance amending the Health Code by adding density, proximity, and sales**  
4 **establishment limitations on the granting of new tobacco sales permits, and**  
5 **renumbering all sections in Article 19H; amending the Business and Tax Regulations**  
6 **Code by increasing the annual license and application fees; and making environmental**  
7 **findings.**

8

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

13

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

15

16 Section 1. The Planning Department has determined that the actions contemplated in  
17 this ordinance comply with the California Environmental Quality Act (California Public  
18 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the  
19 Board of Supervisors in File No. 141098 and is incorporated herein by reference.

20 Section 2. Article 19H of the Health Code is hereby amended by revising and  
21 renumbering (new section numbers in parentheses) Sections 1009.50 (19H.1), 1009.51  
22 (19H.2), 1009.53 (19H.4), ~~4009.551 (19H.5)~~, 1009.56 (19H.9), 1009.57 (19H.10), 1009.58  
23 (19H.11), 1009.59 (19H.12), 1009.60 (19H.13), 1009.61 (19H.14), 1009.62 (19H.15), 1009.63  
24 (19H.16), 1009.64 (19H.17), 1009.66 (19H.19), 1009.68 (19H.21), and 1009.73 (19H.25);  
25 renumbering (new section numbers in parentheses) Sections 1009.52 (19H.3), 1009.54

1 (19H.7), 1009.55 (19H.8), 1009.65 (19H.18), 1009.67 (19H.20), 1009.69 (19H.22), 1009.71  
2 (19H.23), 1009.72 (19H.24), 1009.74 (19H.26), 1009.75 (19H.27), 1009.76 (19H.28), and  
3 1009.77 (19H.29); and adding Sections 19H.5 and 19H.6, resulting in Sections 19H.1-19H.29,  
4 to read as follows:

5 **SEC. ~~1009.50~~19H.1. FINDINGS.**

6 The Board of Supervisors of the City and County of San Francisco hereby finds and  
7 declares as follows:

8 (a) Tobacco is the leading cause of preventable death in the United States and kills nearly 6  
9 million people each year globally (World Health Organization 2013). According to the Centers for  
10 Disease Control and Prevention (CDC), more than 400,000 deaths in the United States each year are  
11 attributable to tobacco use, including one-third of all cancer deaths.

12 (b) In addition to the obvious adverse health impact, tobacco related death and disease have an  
13 adverse economic impact. The CDC reports that tobacco use costs the United States billions of dollars  
14 each year.

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

1 Police Code section 4600.3), ~~and~~ prohibit smoking in enclosed areas and sports stadiums (~~San~~  
2 ~~Francisco~~ Health Code ~~Article 19F~~~~section 1009.22~~) ~~and prohibit the use of electronic cigarettes~~  
3 ~~where smoking is not allowed (Health Code Article 19N).~~

4 (d) ~~B.~~ Despite these state and local restrictions, minors continue to obtain cigarettes  
5 and other ~~T~~obacco ~~P~~roducts at alarming rates. 36.8% of California youth have smoked an entire  
6 cigarette by age 14 according to a 2012 survey conducted by the California Department of Public  
7 Health. The former United States Surgeon General Regina Benjamin at a February 2014 summit  
8 emphasized that the key factor in the fight against tobacco is preventing minors from becoming  
9 smokers. She noted, “for every smoker who dies, there are two so-called replacement smokers trying a  
10 cigarette for the first time and getting hooked.” Children under the age of 18 consume 924 million  
11 packs of cigarettes annually in the United States. Over 29 million packs of cigarettes are sold to  
12 California children annually. More than 60 percent of all smokers begin smoking by the age of 14, and  
13 90 percent begin by age 19.

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

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

18 (e) Although it is unlawful to sell Tobacco Products and/or tobacco paraphernalia to minors,  
19 in a 2013 California youth buying survey, 7.6% of retailers surveyed unlawfully sold Tobacco Products  
20 to minors. These percentages are more concerning locally. San Francisco’s Tobacco Sales to minors  
21 were reported to be 13.4% of retailers in 2012. Notably, sales in the City to minors are well above the  
22 2012 statewide sales rate of 8.7%. More aggressive policies are needed to keep San Francisco’s youth  
23 from gaining access to Tobacco Products.

24 (f) ~~E.~~ There are approximately 1,001 ~~970~~ outlets in San Francisco that are licensed to sell  
25 tobacco, that is about 1 retailer for every 111 youth ~~kids~~ in the community compared to California

1 generally where there are approximately 36,700 licensed tobacco retail stores in California – one for  
2 every 254 youth children. The California Department of Health Services reports that 26.7 percent of  
3 California adolescents believe it is easy to buy a pack of cigarettes.

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

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

9 (g) H. San Francisco has a substantial interest in promoting compliance with State  
10 laws prohibiting sales of cigarettes and ~~†Tobacco p~~Products to minors, in promoting  
11 compliance with laws intended to discourage the purchase of ~~†Tobacco p~~Products by minors,  
12 and in protecting our children from illegally obtained tobacco.

13 (h) Social norms about smoking influence smoking rates, particularly among those not  
14 addicted. Studies have found that strong governmental regulation of smoking corresponds with and  
15 may contribute to anti-smoking norms. Social unacceptability has been repeatedly shown to be an  
16 important influence on both smoking rates and anti-smoking norms. Children and young people are  
17 particularly influenced by cues suggesting smoking is acceptable.

18 (i) Empirical research connects lower densities of retail outlets with lower consumption of  
19 tobacco, particularly among youth. Higher tobacco retail density encourages smoking by making  
20 cigarettes more accessible and available, by normalizing tobacco use, and through increasing  
21 environmental cues to smoke. Research focused on California has found a higher prevalence of  
22 current smoking and experimental smoking among students at schools in areas with a higher density of  
23 tobacco outlets. Prevalence of smoking was higher among students at schools in neighborhoods with  
24 five or more stores that sell tobacco than among students at schools in neighborhoods without any  
25 stores that sell tobacco.

1 (j) California communities in lower socio-economic areas with a higher concentration of  
2 convenience stores have significantly higher rates of smoking. Residents of these neighborhoods are  
3 more at risk for tobacco related disease and death. Likewise, San Francisco's most disadvantaged  
4 neighborhoods are disproportionately impacted by high tobacco retail density. The six supervisorial  
5 districts with the highest proportions of tobacco retail sales by population (Districts 3, 5, 6, 9, 10, and  
6 11) also have the lowest median household incomes in the City. District Six, with a median household  
7 income of \$38,610, has 270 tobacco permits while District Two, with a median household income of  
8 \$102,457, has only 51 tobacco permits. African American and Latino residents are more likely to live  
9 in districts with the highest number of tobacco retail outlets.

10 (k) As the tobacco related public health crisis affects all supervisorial districts in San  
11 Francisco, it is in the City's interest to reduce the disproportionate exposure to tobacco outlets that  
12 exists among supervisorial districts and to minimize exposure in all supervisorial districts by limiting  
13 the number of new tobacco permits issued. District Seven currently has the lowest number(37) (five) of  
14 tobacco permitted retailers per 10,000 residents in San Francisco. Setting a cap slightly above the  
15 District Seven density of permitted tobacco retailers as the maximum for each supervisorial district will  
16 begin to address the disparity of exposure to tobacco outlets among supervisorial districts and reduce  
17 the density of tobacco vendors overall.

18 (l) San Franciscans support limiting and reducing the number of permits for the sale of  
19 tobacco. In a 2012 representative survey of over 220 San Francisco residents, 88.5% felt that too  
20 many stores selling cigarettes is bad for community health; almost 74% would support a law that  
21 very gradually reduces the number of stores selling cigarettes and Tobacco Products given that the  
22 highest density of these is in low income neighborhoods; and 87% would support a policy that would  
23 reduce the amount of Tobacco Products available.

24 (m) Restaurants, and other non-traditional tobacco retailers in California are more likely to  
25 sell tobacco to minors than other retailers. 13.1% percent of restaurants and other

1 nontraditional retailers sold tobacco to minors compared to 8.7% of all other California  
2 retailers. had the highest illegal sale rate to minors, 20.3% or higher on average and nearly  
3 three-times higher than traditional tobacco retailers.

4 (n) Young adult Bar patrons in one California study reported a current smoking rate of 47  
5 percent, nearly four times the 2010 state rate of smoking prevalence for young adults.

6 (o) Social environments such as Bars and clubs are important venues for public health efforts  
7 to address young adult smoking.

8 (p) ~~¶~~ This Article 19H is designed to promote the public interest in ensuring that San  
9 Francisco businesses operate in compliance with applicable laws regulating tobacco,  
10 including laws prohibiting the sale of tobacco to minors and laws regulating smoking.

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

15  
16 **SEC. ~~1009.51~~19H.2. DEFINITIONS.**

17 The following words and phrases, whenever used in this Article, shall be construed as  
18 defined in this section. Words in the singular include the plural and words in the plural include  
19 the singular. Words in the present tense include the future.

20 "Application" means the application submitted under Section 19H.4 for a Tobacco Sales permit  
21 allowing the person or business to engage in the sale of tobacco products at an Establishment.

22 "Bar" means an area, whether a separate, stand-alone business or part of a larger business  
23 which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and  
24 in which the serving of food is incidental to the consumption of such beverages.

1 "Cap" means the figure set forth in Section 19H.5 and represents the total number of permitted  
2 Establishments that may operate in each supervisorial district.

3 "Change of Ownership" means a change of 50 percent or more of the ownership of the  
4 business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer  
5 of 25 percent of the stock ownership of the permittee shall be deemed to be a Change of Ownership.

6 "Density Cap" has the same meaning as "Cap."

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

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

9 "District Population" means the population reported by the Department of Elections in each of  
10 the 11 supervisorial districts as required by Charter Section 13.110.

11 (c) "Establishment" means any store, stand, booth, concession or any other enterprise  
12 that engages in the retail sale of ~~Tobacco~~ Products, and ~~includes~~ stores engaged in  
13 the retail sale of food items.

14 (d) "Permittee" means a person who has obtained a ~~Tobacco~~ Sales permit for a  
15 specific location pursuant to this Article.

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

18 "Restaurant" means a ~~business~~ retail food Establishment that primarily stores, packages,  
19 serves, vends, or otherwise prepares food for human consumption on the premises. "Restaurant"  
20 includes, but is not limited to ~~businesses~~ Establishments primarily engaged in providing (1) food  
21 services to patrons who order and are served while seated on the premises, and pay after eating, and  
22 (2) food services where patrons generally order and pay before eating on the premises, ~~or (3) take-~~  
23 out food services where patrons order ready-to-eat food generally intended for consumption  
24 off the premises. "Restaurant" also includes separately owned food facilities that are located in a  
25 grocery store but does not include the grocery store.

1 "School" means a public or private kindergarten, elementary, middle, junior high or high  
2 school, or a school combining some or all of the above school grades.

3 ~~(f)~~ "Tobacco Pproducts" means tobacco and any substance containing tobacco leaf,  
4 including but not limited to cigarettes, electronic cigarettes, cigars, pipe tobacco, snuff, chewing  
5 tobacco, dipping tobacco, or any other preparation of tobacco, including the cigarettes  
6 commonly known as bidis.

7 ~~(g)~~ "Tobacco sales" means sales, or any offer to sell or exchange, for any form of  
8 consideration, ~~t~~Tobacco ~~p~~Products to any person by any person who operates an  
9 ~~e~~Establishment. "Tobacco sales" includes any display of ~~t~~Tobacco ~~p~~Products.

10 "Tobacco Shop" means any tobacco retailer whose principal business is selling Tobacco  
11 Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor  
12 area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia,  
13 or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco  
14 Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a  
15 Tobacco Product or tobacco paraphernalia.

16 **SEC. ~~1009.52~~19H.3. REQUIREMENT FOR TOBACCO SALES PERMIT.**

17 \* \* \* \*

18 **SEC. 19H.4~~1009.53~~. APPLICATION PROCEDURE: INSPECTION OF PREMISES;**  
19 **ISSUANCE AND DISPLAY OF PERMIT.**

20 (a) **Application.** An ~~a~~Application for a ~~t~~Tobacco ~~s~~Sales permit shall be  
21 submitted in the name of the person(s) proposing to engage in the sale of ~~t~~Tobacco ~~p~~Products  
22 and shall be signed by each person or an authorized agent thereof. The ~~a~~Application shall be  
23 accompanied by the appropriate fees as described in section 35 of the ~~San Francisco~~ Business  
24 and Tax Regulations Code and such fees shall include any required inspections or other work  
25 performed by the Planning Department as required by the referral of the application. A separate



1 ~~an~~Application is required for each location where ~~the~~Tobacco ~~is~~Sales are to be conducted. All  
2 ~~an~~Applications shall be submitted on a form supplied by the Department and shall contain the  
3 following information:

- 4 1. The name, address, email address, and telephone number of the  
5 ~~an~~Applicant;
- 6 2. The ~~e~~ Establishment name, address, email address, and telephone  
7 number for each location for which a ~~the~~Tobacco ~~is~~Sales permit is sought;
- 8 3. Such other information as the Director deems appropriate, including  
9 the ~~A~~applicant's type of business, and whether the ~~an~~Applicant has previously been issued a  
10 permit under this Article that is, or was at any time, suspended or revoked. No permit shall be  
11 issued if the Application is incomplete or inaccurate.

12 (b) **Inspection by Director.** Upon receipt of a completed ~~an~~Application and  
13 fees, the Director may inspect the location at which ~~the~~Tobacco ~~is~~Sales are to be permitted. The  
14 Director may also ask the ~~an~~Applicant to provide additional information that is reasonably  
15 related to the determination whether a permit may issue.

16 (c) Referral to the Planning Department. The Director will then refer the  
17 Applications requiring inspection as to proximity to Schools and existing Establishments to the  
18 Planning Department. The Planning Department upon referral shall analyze the Application against  
19 the most recent data provided by the Department to determine whether the Applicant's location will  
20 comply with subsections (f)(3) and (f)(4) and whether the location qualifies as a Tobacco Shop.

21 (d)(e) Issuance of Permit. If the Director is satisfied that the ~~an~~Applicant has  
22 met the requirements of this Article and that issuance of the permit will not violate any law, the  
23 Department shall issue the permit. An Establishment may not sell Tobacco Products until the permit  
24 is issued. No permit shall issue if the Director finds that the Applicant is in violation of San Francisco  
25 Health Code section 1009.1 (regulating cigarette vending machines), San Francisco Police Code

1 ~~section 4600.3 (regulating the self-service merchandising of tobacco products), if the Applicant is a~~  
2 ~~pharmacy prohibited from selling tobacco products under Article 19J. No permit shall issue if the~~  
3 ~~Application is incomplete or inaccurate.~~

4 ~~(e)~~(d) **Display of Permit.** Each permittee shall display the permit prominently at  
5 each location where ~~†~~Tobacco ~~‡~~Sales occur. No permit that has been suspended shall be  
6 displayed during the period of suspension. A permit that is revoked is void and may not be  
7 displayed.

8 **(f) Grounds for Denial.**

9 (1) No new permit shall be issued if the Director finds that the Applicant is in  
10 violation of Health Code Article 19; Police Code Section 4600.3 (regulating the self-service  
11 merchandising of tobacco products), or the California Labor Code.

12 (2) No new permit shall be issued if the Applicant does not have a valid current  
13 Tobacco Retail Permit from the State Board of Equalization where the Applicant is required to have the  
14 State Board of Equalization permit except for businesses selling only electronic cigarettes.

15 (3) No new permit shall be issued if the Applicant will be within 500 feet of the  
16 nearest point of the property line of a ~~s~~ School as measured by a straight line from the nearest point of  
17 the property line on which a ~~s~~ School is located to the nearest point of the property line on which the  
18 Applicant's Establishment will be located.

19 (4) No new permit shall be issued if the Applicant will be located within 500 feet  
20 of the nearest point of the property line of an existing Establishment as measured by a straight line  
21 from the nearest point of the property line on which the Applicant's Establishment will be located to the  
22 nearest point of the property line of the existing Establishment.

23 (5) No new permit shall be issued in any supervisorial district that has 45 or  
24 more Establishments with Tobacco Sales permits.

1                                   (6) No new permit shall be issued to any Applicant whose main purpose is  
2 offering food or alcoholic beverages for sale for consumption on the premises, including Bars and  
3 Restaurants.

4                                   (7) No new permit shall be issued to any Applicant for operation of a Tobacco  
5 Shop.

6                                   (8) No new permit shall be issued for a location not previously occupied by a  
7 permitted Establishment.

8                                   (g) Pending Applications. Applications that have been submitted to the Director for  
9 approval as of December 9, 2014 shall not be subject to the Section 19H.4(f)(2)-19H.4(f)(8)  
10 and Section 19H.5.

11  
12                                   **SEC. 19H.5 DENSITY CAP**

13                                   (a) The Density Cap shall be forty-five (45) permitted Tobacco Sales Establishments in a  
14 supervisory district. The Department shall assess the Density Cap every two years to evaluate  
15 whether to recommend to the Board of Supervisors an amendment to this Article to change the number  
16 of permitted Establishments as reasonably necessary to advance the public health purposes this Article  
17 seeks to achieve. The City may not issue a new permit in any supervisory district that is at or above  
18 the Density Cap at the time of submission of the Application.

19                                   (b) Pursuant to its authority under Section 19H.26 to adopt rules, the Department may adopt  
20 rules governing the approval process for application submitted in a supervisory district where the  
21 number of permits has fallen below the cap, including rules on the timing for the approval process.

22                                   **SEC. 19H.6. EXCEPTIONS FOR CERTAIN NEW PERMITS. INTERIM EXCEPTION**  
23 **FOR NEW PERMITS WHERE SALE OF THE ESTABLISHMENT IS PENDING.**

24                                   Notwithstanding Section 19H.5 and Sections 19H.4(f)(3),(4),(5) and (7):  
25

1           (a) If an owner of a retail food store establishment as defined in the Planning Code or  
2 Tobacco Shop who holds a Tobacco Sales permit and has been in business for five years as  
3 of the effective date of this Section 19H.6, submits an affidavit to the Director that attests to  
4 ownership of the business at the same location and under the same Tobacco Sales permit for  
5 five consecutive years immediately preceding submission of the affidavit and that also states  
6 that the owner is in negotiations with a specific buyer for the retail food store establishment or  
7 Tobacco Shop at that location, then that buyer ("new buyer") may apply for, and the Director  
8 may issue, a Tobacco Sales permit to the new buyer for the retail food store establishment or  
9 Tobacco Shop at that location, on a one-time basis.

10           (b) If the new buyer submits an affidavit to the Director, stating that the new buyer has  
11 been in business continuously as a retail food store establishment or Tobacco Shop at that  
12 same location under the Tobacco Sales permit obtained in accordance with subsection (a)  
13 and also states that the new buyer has held the permit for at least 10 years, then a  
14 subsequent buyer of the retail food store establishment or Tobacco Shop at that location  
15 ("subsequent buyer") may apply for, and the Director may issue, a Tobacco Sales permit to  
16 the subsequent buyer for the retail food store establishment or Tobacco Shop on a one-time  
17 basis.

18           (c) Where the owner of a retail food store establishment or Tobacco Shop that holds a  
19 Tobacco Sales permit as of the effective date of this Section 19H.6, a child of the owner may  
20 apply for, and the Director may issue, a Tobacco Sales permit to the child for that retail food  
21 store establishment or Tobacco Shop at that location.

22           (d) An owner of a retail food store establishment or Tobacco Shop holding a Tobacco  
23 Sales permit as of the effective date of this Section 19H.6, who must relocate under Chapter  
24 34B of the Building Code may apply for, and the Director may issue, a new Tobacco Sales  
25 permit for the location of the owner's retail food store establishment or Tobacco Shop.

1           (e) An owner of a Bar or Tavern (cigar or smoking bar) who qualified for an exemption  
2 under Section 1009.23(d) of this Code who holds a Tobacco Sales permit and has been in  
3 business for five years as of the effective date of this Section 19H.6, who submits an affidavit  
4 to the Director that attests to ownership of the business at the same location and under the  
5 same Tobacco Sales permit for five consecutive years immediately preceding submission of  
6 the affidavit and that also states that the owner is in negotiations with a specific buyer for the  
7 Cigar or Smoking Bar at that location, then that buyer ("new buyer") may apply for, and the  
8 Director may issue, a Tobacco Sales permit to the new buyer for the Cigar or Smoking Bar at  
9 that location, on a one-time basis.

10           (f) If the new buyer submits an affidavit to the Director, stating that the new buyer has  
11 been in business continuously as a Cigar or Smoking Bar at that same location under the  
12 Tobacco Sales permit obtained in accordance with subsection (a) and also states that the new  
13 buyer has held the permit for at least 10 years, then a subsequent buyer of the Cigar or  
14 Smoking Bar at that location ("subsequent buyer") may apply for, and the Director may issue,  
15 a Tobacco Sales permit to the subsequent buyer for the Cigar or Smoking Bar on a one-time  
16 basis.

17           (g) If a spouse or domestic partner acquires the ownership of an Establishment  
18 through the death of, or divorce from the owner identified on the permit and submits an  
19 affidavit to the Director attesting to the acquisition of the Establishment accompanied by any  
20 documentation requested by the Director, the Director may issue a Tobacco Sales permit to  
21 the Applicant spouse or domestic partner on a one-time basis.

22  
23 ~~Applications submitted under Section 19H.4 on or before September 1, 2014 for a new permit~~  
24 ~~subject to Section 19H.5 where an Establishment has held a permit to sell Tobacco Products~~  
25 ~~for or more years at the location subject to the sale if the Establishment submits an affidavit to~~

1 accompany the Application stating that no change of ownership has occurred within the prior  
2 seven years and that the current permit holder had been in contract with a buyer of the  
3 Establishment as of September 1, 2014.

4  
5  
6 **SEC. 19H.71009.54. PERMIT AND ANNUAL LICENSE FEES.**

7 (a) The Department shall charge every applicant for a tobacco sales permit a non-  
8 refundable application fee for the initial inspection and processing of the application and an  
9 annual license fee sufficient to cover the costs of annual inspections, as determined by the  
10 Director . The application and processing fee shall be \$53 and is covered by Section 35 of  
11 the San Francisco Business and Tax Regulations Code. The annual fee is listed in Section  
12 249.16 of the San Francisco Business and Tax Regulations Code. The Fee shall be due  
13 annually on March 31 of each year, pursuant to Section 76.1, Article 2 of the San Francisco  
14 Business and Tax Regulations Code.

15 \* \* \* \*

16 **SEC. 19H.81009.55. PERMIT MAY NOT BE TRANSFERRED TO NEW PERSONS OR**  
17 **LOCATIONS.**

18 \* \* \* \*

19 **SEC. 19H.91009.56. ENFORCEMENT AND INSPECTION.**

20 The Director may enforce all provisions of this Article. Specific grounds for  
21 enforcement are set forth in sections 19H.101009.57 through 19H.181009.65. Upon presentation  
22 of proper credentials, the Director may enter and inspect at any time during regular business  
23 hours any ~~e~~Establishment that is engaging in ~~#~~Tobacco ~~s~~Sales, or is suspected by the Director  
24 of engaging in such sales.

1           **SEC. 19H.101009.57. CONDUCT VIOLATING *SAN FRANCISCO* HEALTH CODE**  
2 **ARTICLE 19DSECTION 1009.1 (REGULATING CIGARETTE VENDING MACHINES).**

3           (a) Upon a decision by the Director that the *p*Permittee or the *p*Permittee's agent or  
4 employee has engaged in any conduct that violates *San Francisco* Health Code *Article*  
5 *19Dsection 1009.1* (regulating cigarette vending machines), the Director may suspend a *t*  
6 *Tobacco S*ales permit as set forth in section *19H.191009.66*, impose administrative penalties  
7 as set forth in section *19H.201009.67*, or both suspend the permit and impose administrative  
8 penalties.

9           (b) The Director shall commence enforcement of this section by serving either a  
10 notice of correction under section *19H.211009.68* of this Article or a notice of initial  
11 determination under section *19H.221009.69* of this Article.

12           **SEC. 19H.111009.58. CONDUCT VIOLATING *SAN FRANCISCO* POLICE CODE**  
13 **SECTION 4600.3 (REGULATING THE SELF-SERVICE MERCHANDISING OF TOBACCO**  
14 **PRODUCTS).**

15           (a) Upon a decision by the Director that the *p*Permittee or the *p*Permittee's agent or  
16 employee has engaged in any conduct that violates *San Francisco* Police Code section 4600.3  
17 (regulating the self-service merchandising of tobacco products), the Director may suspend a  
18 *t*Tobacco *s*Sales permit as set forth in section *19H.191009.66*, impose administrative penalties  
19 as set forth in section *19H.201009.67*, or both suspend the permit and impose administrative  
20 penalties.

21           (b) The Director shall commence enforcement of this section by serving either a  
22 notice of correction under section *19H.211009.68* of this Article or a notice of initial  
23 determination under section *19H.221009.69* of this Article.

1           **SEC. 19H.121009.59. CONDUCT VIOLATING ~~SAN FRANCISCO~~ HEALTH CODE**  
2 **ARTICLE 19FSECTION 1009.22 (PROHIBITING SMOKING IN ENCLOSED AREAS AND**  
3 **SPORTS STADIUMS).**

4           (a) Upon a decision by the Director that the ~~p~~Permittee or the ~~p~~Permittee's agent or  
5 employee has engaged in any conduct that violates ~~San Francisco~~ Health Code Article  
6 19Fsection 1009.22 (prohibiting smoking in enclosed areas and sports stadiums), the Director  
7 may suspend a ~~t~~Tobacco ~~s~~Sales permit as set forth in section 19H.191009.66, impose  
8 administrative penalties as set forth in section 19H.201009.67, or both suspend the permit and  
9 impose administrative penalties.

10          (b) The Director shall commence enforcement of this section by serving either a  
11 notice of correction under section 19H.211009.68 of this Article or a notice of initial  
12 determination under section 19H.221009.69 of this Article.

13           **SEC. 19H.131009.60. CONDUCT VIOLATING TOBACCO CONTROL LAWS.**

14          (a) If the Director decides that the ~~p~~Permittee or the ~~p~~Permittee's agent or employee  
15 has engaged in any conduct that violates local, state, or federal law applicable to ~~t~~Tobacco  
16 ~~p~~Products or ~~t~~Tobacco ~~s~~Sales, including Administrative Code Chapter 105 (imposing Cigarette  
17 Litter Abatement Fee), the Director may suspend a ~~t~~Tobacco ~~s~~Sales permit as set forth in  
18 section 19H.191009.66, impose administrative penalties as set forth in section 19H.201009.67,  
19 or both suspend the permit and impose administrative penalties.

20          (b) The Director shall commence enforcement of this section by serving either a  
21 notice of correction under section 19H.211009.68 of this Article or a notice of initial  
22 determination under section 19H.221009.69 of this Article.

23           **SEC. 19H.141009.61. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION**  
24 **308 (PROHIBITING THE SALE OF TOBACCO TO MINORS).**



1 (a) Upon a decision by the Director that the ~~p~~Permittee or the ~~p~~Permittee's agent or  
2 employee has engaged in any conduct that violates California Penal Code section 308  
3 (prohibiting the sale of tobacco to minors), the Director may suspend a tobacco sales permit  
4 as set forth in section ~~19H.191009.66~~.

5 (b) The Director shall commence enforcement of this section by serving a notice of  
6 initial determination in accordance with section ~~19H.221009.69~~ of this Article.

7 **SEC. ~~19H.151009.62~~. CONDUCT VIOLATING CALIFORNIA LABOR CODE SECTION**  
8 **6404.5 (PROHIBITING SMOKING IN ENCLOSED PLACES OF EMPLOYMENT).**

9 (a) Upon a decision by the Director that the ~~p~~Permittee or the ~~p~~Permittee's agent or  
10 employee has engaged in any conduct that violates California Labor Code section 6404.5  
11 (prohibiting smoking in enclosed places of employment), the Director may suspend a tobacco  
12 sales permit as set forth in section ~~19H.191009.66~~.

13 (b) The Director shall commence enforcement of this section by serving a notice of  
14 initial determination in accordance with section ~~19H.221009.69~~ of this Article.

15 **SEC. ~~19H.161009.63~~. FRAUDULENT PERMIT APPLICATIONS.**

16 (a) Upon a decision by the Director that the ~~p~~Permittee or the ~~p~~Permittee's agent or  
17 employee has obtained tobacco ~~s~~ales permit from the Department by fraudulent or willful  
18 misrepresentation, the Director may suspend a ~~#~~Tobacco ~~s~~Sales permit as set forth in section  
19 ~~19H.191009.66~~.

20 (b) Upon a final decision by the Director that the ~~p~~Permittee or the ~~p~~Permittee's  
21 agent or employee has obtained a ~~#~~Tobacco ~~s~~Sales permit from the Department by fraudulent  
22 or willful misrepresentation, the Director may impose administrative penalties as set forth in  
23 section ~~19H.201009.67~~.

1 (c) Upon a final decision by the Director that the ~~p~~Permittee or the ~~p~~Permittee's  
2 agent or employee has obtained a ~~#~~Tobacco ~~s~~Sales permit from the Department by fraudulent  
3 or willful misrepresentation, the Director may revoke a ~~#~~Tobacco ~~s~~Sales permit.

4 (d) Upon a final decision by the Director that the ~~p~~Permittee or the ~~p~~Permittee's  
5 agent or employee has obtained a ~~#~~Tobacco ~~s~~Sales permit from the Department by fraudulent  
6 or willful misrepresentation, the Director may impose administrative penalties in addition to  
7 either suspending or revoking the ~~#~~Tobacco ~~s~~Sales permit.

8 (e) The Director shall commence enforcement of this section by serving a notice of  
9 initial determination in accordance with section ~~19H.221009.69~~ of this Article.

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

15 **SEC. ~~19H.171009.64~~ SELLING TOBACCO WITHOUT A PERMIT.**

16 (a) Upon a final decision by the Director that any person has engaged in the  
17 sale of tobacco at any *Establishment* without a permit, the Director may impose administrative  
18 penalties as set forth in section ~~19H.201009.67~~.

19 (b) The Director shall commence enforcement of this section by serving a notice  
20 of initial determination in accordance with section ~~19H.221009.69~~ of this Article. This Notice of  
21 Initial Determination may require that all tobacco sales cease and may impose an  
22 administrative penalty.

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

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

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

9  
10 **SEC. 19H.181009.65. OTHER ENFORCEMENT.**

11 \* \* \* \*

12 **SEC. 19H.191009.66 TIME PERIOD OF SUSPENSION OF PERMIT.**

13 When this Article allows the Director to suspend a permit, the following sanctions may  
14 be imposed:

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

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

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

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

22 **SEC. 19H. 201009.67. ADMINISTRATIVE PENALTY.**

23 \* \* \* \*

24 **SEC. 19H.211009.68. NOTICE OF CORRECTION.**

1           When the Director commences an enforcement action with a notice of correction, the  
2 Director shall serve the notice on the *p*Permittee or the *p*Permittee's agent. The notice shall  
3 state that the Department has determined that a violation may have occurred and that  
4 reasonable grounds exist to support this determination. The notice may require corrective  
5 action immediately or upon a schedule required by the Director. The Director may require the  
6 *p*Permittee to post the notice of correction at the location where the Department alleges that  
7 violations have occurred. If the *p*Permittee fails to obey a notice of correction, the Director may  
8 serve a notice of initial determination in accordance with section 19H.221009.69 of this Article.

9  
10  
11           **SEC. 19H.221009.69. NOTICE OF INITIAL DETERMINATION.**

12           \* \* \* \*

13           **SEC. 19H.231009.71. PAYMENT OF ADMINISTRATIVE PENALTIES.**

14           \* \* \* \*

15           **SEC. 19H.241009.72. APPEALS TO BOARD OF APPEALS.**

16           \* \* \* \*

17           **SEC. 19H.251009.73. OTHER REMEDIES.**

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

1           **SEC. 19H.261009.74. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

2           \* \* \* \*

3           **SEC. 19H.271009.75. CITY UNDERTAKING LIMITED TO PROMOTION OF THE**  
4 **GENERAL WELFARE.**

5           \* \* \* \*

6           **SEC. 19H.281009.76. PREEMPTION.**

7           \* \* \* \*

8           **SEC. 19H.291009.77. SEVERABILITY.**

9           \* \* \* \*

10           Section 3. The Business and Tax Regulations Code is hereby amended by revising  
11 Section 249.16, to read as follows:

12  
13           **SEC. 249.16. TOBACCO LICENSE PERMIT FEE.**

14           Every person, firm or corporation engaged in tobacco sales shall pay an annual license  
15 fee of ~~\$188~~ \$200 to the Tax Collector. The amount of the fee shall be determined and  
16 published annually by the Department of Health based on the initial amount of \$188 set in  
17 Ordinance 149-08 and adjusted thereafter under Section 76.1(c) of the Business and Tax  
18 Regulations Code. The license fee set forth in this Section shall be paid annually on or before  
19 March 31, in accordance with the provisions of Section 76.1 of the Business and Tax  
20 Regulations Code.

21           Section 4. Effective Date. This ordinance shall become effective 30 days after  
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
24 of Supervisors overrides the Mayor's veto of the ordinance.

1           Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the “Note” that appears under  
6 the official title of the ordinance.

7           Section 6. No Conflict with Federal or State Law. Nothing in this ordinance shall be  
8 interpreted or applied so as to create any requirement, power, or duty in conflict with any  
9 federal or state law.

10

11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13 By: \_\_\_\_\_  
14       ALEETA M. VAN RUNKLE  
15       Deputy City Attorney

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