

BOARD of SUPERVISORS



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March 16, 2015

File No. 150242

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On March 10, 2015, Supervisor Farrell introduced the following legislation:

File No. 150242

Ordinance amending the Health Code to ban the use of smokeless tobacco products in stadiums, sports arenas, and playing fields; amending the definition of tobacco product to include a device or any portion of a device used to consume tobacco products; and making environmental findings.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink, appearing to read "Derek Evans".

By: Derek Evans, Assistant Clerk

Attachment

cc: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

1 [Health Code - Ban on Smokeless Tobacco Use - Defining Tobacco Product to Include
2 Devices for Using Tobacco]

3 **Ordinance amending the Health Code to ban the use of smokeless tobacco products in**
4 **stadiums, sports arenas, and playing fields; amending the definition of tobacco**
5 **product to include a device or any portion of a device used to consume tobacco**
6 **products; and making environmental findings.**

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

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

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 Sections 21000 et seq.). Said determination is on file with the Clerk of the
19 Board of Supervisors in File No. ___ and is incorporated herein by reference.

20 Section 2. The Health Code is hereby amended by adding Article 19O, consisting of
21 Sections 19O.1 through 19O.10, to read as follows:

22 **SEC. 190.1. FINDINGS.**

23 Public health authorities, including the Surgeon General and the National Cancer Institute,
24 have found that smokeless tobacco use is hazardous to health and can easily lead to nicotine addiction.
25 The National Cancer Institute states that chewing tobacco and snuff contain 28 cancer-causing agents

1 and the U.S. National Toxicology Program has established smokeless tobacco as a “known human
2 carcinogen.”

3 The National Cancer Institute and the International Agency for Research on Cancer report that
4 use of smokeless tobacco causes oral, pancreatic, and esophageal cancer; and may also cause heart
5 disease, gum disease, and oral lesions other than cancer, such as leukoplakia (precancerous white
6 patches in the mouth).

7 Youth participation in sports has many health benefits including the development of positive
8 fitness habits, reducing obesity, and combating the epidemic of early onset diabetes. 45 percent of all
9 American youth play in an agency-sponsored sports league such as Little League baseball or Pop
10 Warner football—that figure represents 22 million children each year who are influenced by actively
11 participating in organized sporting events.

12 But youth players and spectators are also vulnerable to developing a potentially deadly habit,
13 the use of smokeless tobacco. Smokeless tobacco is strongly associated with playing sports particularly
14 with a legacy of decades of association with baseball through marketing tie-ins and regular use of the
15 product by players. In a 2012 report, the Centers for Disease Control and Prevention (CDC) concluded
16 that, “Athletes serve as role models for youth, and smokeless tobacco manufacturers have used
17 advertising, images, and testimonials featuring athletes and sports to make smokeless tobacco products
18 appear attractive to youth. Children and teens closely observe athletes’ actions, including their use of
19 tobacco products, and are influenced by what they see. Adolescents tend to mimic the behaviors of
20 those they look up to and identify with, including baseball players and other athletes.”

21 In a letter to former Major League Baseball Commissioner Bud Selig following the 2014 death
22 of baseball icon Tony Gwynn due to salivary gland cancer, nine leading health care organizations,
23 including the American Medical Association, American Cancer Society, American Lung Association,
24 American Heart Association, Campaign for Tobacco-Free Kids, and American Dental Association,
25 stated that, “Use of smokeless tobacco endangers the health of major league ballplayers. It also sets a

1 terrible example for the millions of young people who watch baseball at the ballpark or on TV and
2 often see players and managers using tobacco.”

3 Professional and college football players as well as those participating in wrestling, ice hockey,
4 and lacrosse also have been shown to use smokeless tobacco products at high rates.

5 The CDC Youth Risk Behavioral Surveillance Report found that nationally 14.7% of high-
6 school boys and 8.8 % of all high-school students reported using smokeless products in 2013. In San
7 Francisco, 3.3% of high-school students reported current use of smokeless tobacco in 2013. Each year,
8 about 415,000 kids nationally ages 12-17 use smokeless tobacco for the first time.

9 Smokeless tobacco products are heavily advertised and promoted, with the top five smokeless
10 tobacco companies in the U.S. more than tripling their total advertising and marketing expenditures
11 from 1998 to 2011. The Federal Trade Commission reports that in 2011, these smokeless tobacco
12 companies spent \$451.7 million to advertise and promote their products.

13 Flavored tobacco products are known to be attractive to youth and flavored smokeless tobacco
14 products have increased in the market 72% between 2005 and 2011, and contributed to 59.4% of total
15 growth of the smokeless tobacco market. Smokeless tobacco products are viewed by young adults
16 positively because they come in flavors and in attractive packaging, and are promoted as recreational,
17 convenient, concealed, modern, and fun.

18 Tobacco use has been prohibited in minor league baseball games since 1993 and in the
19 National Collegiate Athletic Association since 1994 (which also adopted a zero-tolerance policy in
20 2002); the Little League World Series is tobacco-free, and the San Francisco Unified School District
21 policies prohibit use of tobacco, including smokeless tobacco, during athletic events by players and
22 coaches since 1996. Nearly 1,000 college campuses nationwide are tobacco-free. Research shows that
23 students, faculty, and staff looking to stop their nicotine habits are more likely to do so in an
24 environment that prohibits all tobacco use.

1 The entire University of California system (10 campuses) is tobacco-free and smoke-free,
2 including athletic fields and stadiums. Sacramento State University, Santa Clara University, and San
3 Jose State University all have plans in place to become tobacco-free during 2015.

4 The following Major League Baseball stadiums have instituted various forms of tobacco-free
5 policies: the Milwaukee Brewers at Miller Park, Saint Louis Cardinals at Busch Stadium, the Seattle
6 Mariners at Safeco Field, and the Cleveland Indians at Progressive Field. AT&T Park in San
7 Francisco is a smoke-free facility in accordance with Article 19F of the Health Code, which prohibits
8 smoking anywhere in the ballpark, including vaporized e-cigarette smoking. The Major League Players
9 Association publically supports banning the use of smokeless tobacco products as a means of
10 protecting the health of their players and the public.

11 Use of smokeless tobacco can also interfere with the enjoyment of spectators and others using
12 sports fields. Users of two forms of smokeless tobacco, snuff and chewing tobacco, let the tobacco sit in
13 their mouth while they suck on the tobacco juices, spitting often to get rid of the saliva that builds up
14 creating unsightly and offensive conditions for others.

15 Research supports that changing policy, environment, and social norms regarding smokeless
16 tobacco use can positively influence young people and reduce use. Coaches and players at all levels,
17 especially professionals, can become positive role-models to young players by reducing and/or ceasing
18 their use, reinforcing existing smokeless tobacco bans, and participating in educating youth on the
19 health risks of smokeless tobacco.

20 **SEC. 190.2. DEFINITIONS.**

21 “Director” means the Director of Health or his or her designee.

22 “School” means a public or private middle, junior high or high school, or a school combining
23 some or all of the above school grades, or a college or university.

24 “Tobacco Product” means (1) any product containing, made, or derived from tobacco or
25 nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed.

1 dissolved, inhaled, snorted, or sniffed, or (2) any device or component, part, or accessory that delivers
2 nicotine alone or combined with other substances to the person using the device including but not
3 limited to electronic cigarettes, cigars, pipes, or hookah. "Tobacco Product" does not include any
4 product that has been approved by the United States Food and Drug Administration for use as a
5 tobacco cessation product or for other therapeutic purposes where such product is marketed and sold
6 solely for such an approved purpose.

7 **SEC. 190.3. PROHIBITING THE USE OF TOBACCO PRODUCTS AT ATHLETIC**
8 **VENUES.**

9 (a) The use of Tobacco Products is prohibited if (1) the property is designated or otherwise
10 identified as being a sport or playing field for organized sports and (2) smoking is prohibited at the
11 location by Article 19I of the Health Code, "Prohibiting Smoking in City Park and Recreational Areas
12 and Farmers' Markets."

13 (b) The use of Tobacco Products is prohibited if the property is a "sports arena" including
14 stadiums as defined in Article 19F of the Health Code.

15 **SEC. 190.4. RULES AND REGULATIONS.**

16 The Director, after a noticed public hearing and consultation with the Director of the
17 Recreation and Park Commission, may adopt rules and regulations to carry out the provisions of this
18 Article 19O.

19 **SEC. 190.5. ENFORCEMENT.**

20 (a) Any person who violates this Article 19O is subject to enforcement under Article 19I of the
21 Health Code where the property is owned or under the jurisdiction of the City, including but not limited
22 to the Recreation and Park Commission.

23 (b) Use of smokeless tobacco products where prohibited on property other than locations
24 covered by Section 190.3(a) shall be enforced under Article 19F of the Health Code.

1 **SEC. 190.6. SIGNS.**

2 Any person who owns, operates, or manages property subject to this Article 190 is required to
3 post clear and prominent “no use of smokeless tobacco products” signs at each entrance to the
4 property. The Director shall specify the contents, size, and any other information that he or she believes
5 necessary in the Rules and Regulations issued under this Article.

6 **SEC. 190.7. PREEMPTION.**

7 Nothing in this Article 190 shall be interpreted or applied as to create any requirement, power,
8 or duty in conflict with any federal or state law.

9 **SEC. 190.8. SEVERABILITY.**

10 If any section, subsection, sentence, clause, or phrase, or word of this Article 190, or any
11 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
12 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
13 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
14 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
15 declared invalid or unconstitutional without regard to whether any other portion of this Article or
16 application thereof would be subsequently declared invalid or unconstitutional.

17 **SEC.190.9. UNDERTAKING FOR THE GENERAL WELFARE.**

18 In enacting and implementing this Article 190, the City is assuming an undertaking only to
19 promote the general welfare. It is not assuming nor is it imposing on its officers and employees an
20 obligation for breach of which it is liable in money damages to any person who claims that such breach
21 proximately caused injury.

22 **SEC. 190.10. OPERATIVE DATE.**

23 This Article 190 shall become operative on January 1, 2016.

24 Section 3. The Health Code is hereby amended by revising Article 19F, Section
25 1009.22, to read as follows:

1 **ARTICLE 19F: PROHIBITING SMOKING IN ENCLOSED AREAS,**
2 **CERTAIN UNENCLOSED AREAS, AND SPORTS STADIUMS**

3 * * * *

4 **SEC.1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES,**
5 **CERTAIN UNENCLOSED AREAS, ~~AND~~ ENCLOSED STRUCTURES CONTAINING**
6 **CERTAIN USES, AND ~~CERTAIN AREAS OF~~ SPORTS STADIUMS.**

7 * * * *

8 (b) No owner, manager, or operator shall knowingly and intentionally permit, and no
9 person on the premises shall engage in, the smoking of tobacco products in any enclosed or
10 open space at a sports stadium, *except in (1) ramps outside seating areas, (2) private suites and*
11 *corridors to private suites and corridors to private suites, and (3) areas designated for parking. Any*
12 *portion of a sports stadium used as a bar, restaurant, or service area shall be governed by this Article.*
13 *For purposes of this subsection, a sports stadium means a facility which has a seating capacity of at*
14 *least 30,000 people.*

15 * * * *

16 Section 4. The Health Code is hereby amended by revising Article 19H, Section
17 19H.2, to read as follows:

18 **ARTICLE 19H: PERMITS FOR THE SALE OF TOBACCO**

19 * * * *

20 **SEC. 19H.2. DEFINITIONS.**

21 * * * *

22 “Tobacco Product” means (1) any product containing, made, or derived from tobacco or
23 nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed,
24 dissolved, inhaled, snorted, or sniffed, or (2) any device or component, part, or accessory that delivers
25 nicotine alone or combined with any other substances to the person using the device, including but not

1 limited to cigarettes, electronic cigarettes, cigars, pipes, hookah, pipe tobacco, snuff, chewing
2 tobacco, dipping tobacco or ~~any other preparation of tobacco, including the cigarettes, commonly~~
3 ~~known as~~ bidis. “Tobacco Product” does not include any product that has been approved by the United
4 States Food and Drug Administration for use as a tobacco cessation product or for other therapeutic
5 purposes where such product is marketed and sold solely for such an approved purpose.


6 * * * *

7 Section 5. Effective and Operative Dates. This ordinance shall become effective 30
8 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
9 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
10 or the Board of Supervisors overrides the Mayor’s veto of the ordinance. This ordinance shall
11 become operative on January 1, 2016.

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

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

21 By:


22 ALEETA M. VAN RUNKLE
23 Deputy City Attorney

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