



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

OFFICE OF SMALL BUSINESS  
REGINA DICK-ENDRIZZI, DIRECTOR

June 7, 2017

Ms. Angela Calvillo, Clerk of the Board  
City Hall Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RE: BOS File No. 170441 [Health Code - Banning the Sale of Flavored Tobacco Products]

Small Business Commission Recommendation to the Board of Supervisors: **Do not approve**

Dear Ms. Calvillo,

On May 8, 2017, the Small Business Commission (SBC) voted (4-0, 2 absent, 1 recused) to recommend that the Board of Supervisors not approve BOS File No. 170441.

The Small Business Commission is supportive of the health-related intent behind the legislation, but questioned its implications and impact on San Francisco small businesses that sell tobacco products and impact the tax revenue that is collect that helps to offset the impacts of the tobacco. The SBC in general does not support outright bans as a means of achieving a policy objective, particularly when the ban is applying a year 2000 regulatory model that does not account for current day consumer behavior on where and how retail goods are purchased. The SBC noted that is best for San Francisco small businesses and health policy goals to implement such regulation at the state level.

One of the finding in this ordinance is to justify the need to ban flavored products is to reduce to youth access to smoking. San Francisco and the state of California changed the legal age to purchase tobacco from 18 to 21. The intent of these laws was to reduce youth access with a focus on teenagers between ages 15 and 17<sup>1</sup>. The SBC sent a recommendation "To Approve" the age increase from 18 to 21.

San Francisco's law went into effective June 1, 2016 and California's law was effective June 9, 2016. It has been one year since these laws became effective. The SBC noted that before enacting this ordinance the Department of Public Health needs to report on whether the change in legal age from 18 to 21 has or has/not reduced youth access to tobacco products and becoming addicted. To continue to site national data to justify the need to ban any tobacco product at the local level now or in the future will not reflect the data and effectiveness of change in legal age in SF and California.

In the United States, California and Hawaii are the only 2 states where the legal age to purchase tobacco is 21; 4 states have the legal age at 19; and the remaining 44 states and two territories have

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<sup>1</sup> [Institute of Medicine](#)

the legal age at 18.

Figure 1: U.S. Map of Tobacco Minimum Purchase Age



The SBC noted that to achieve the health policy goal of this ordinance the definition of “Establishment” needs to include online retailers and delivery apps based outside of SF. The law does not prohibit individuals from online purchases or utilizing delivery apps of businesses outside San Francisco; it does prohibit the sale and delivery of those products by San Francisco businesses (whether in physical stores or on local business websites). It is not logical that an individual located in San Francisco is not be able to purchase from an online retailer in SF, but can purchase the same product from an online retailer that is located outside of SF.

Flavored tobacco products can be easily purchased in Daly City and any other city easily accessible to San Francisco borders.

The SBC did note that while other cities are passing laws reducing access to flavored tobacco, these cities do not have a full ban on all flavored tobacco products for all tobacco license holders and this proposed ordinance does.

- New York City: There is a ban on flavored tobacco products, excluding menthol flavored products.
- Chicago: Based retailers located within a 500 foot radius of an elementary, middle or secondary school. Exception for a “Retail Tobacco Store” that derives more than 80% of its gross revenue from the sale of loose tobacco, cigarettes, cigarillos, cigars, pipes, other smoking devices and accessories.
- Berkeley (600 foot buffer zone around K-12 schools). Effective Jan. 1, 2017
- Santa Clara County: Retailers only accessible to 21+ are exempted and can still sell flavored tobacco products. The existing ordinance does not include flavored electronic cigarettes, and the enforcement policy will not be applied to adult-only tobacco retailers.
- Hayward: Banned new hookah lounges and vapor stores that sell e-cigarettes. Existing vapor stores, hookah lounges, and businesses that sell tobacco would not be affected.
- Pending: Oakland the ordinance would prohibit all flavored tobacco products from being sold in Oakland, except for stores that primarily sell tobacco and are off limits to people younger than 18.
- Pending: San Leandro bans opening new hookah lounges and vapor stores that sell e-cigarettes. The proposal to ban menthol cigarettes was put on hold.

Director's Note:

Much of the flavored tobacco products can be purchased online without having to present ID at purchase or delivery of the product. Cigarettes are not as easily purchased through an online retailer. Attached are two receipts of products that I purchased online. I did not have to pay the 27.3% tobacco tax that is required by the State of California for non-cigarette tobacco products. Because I wanted to test the ease of purchasing and delivery of these flavored tobacco products I paid a fairly high shipping charge due to the small amount of items purchased. For this company purchasing approximately \$64.00 in product the base shipping cost is the equivalent to the 27.3% that an individual would pay in tax for similar goods purchased in SF.

San Francisco is ground zero for app creation. People are becoming more accustomed of being able to purchase anything they want to through the fingertips of their phone and if it does not exist then it will be created. It is naïve to think that reducing access via brick and mortar will not spur the creation of apps to fill the gap. Any additional legislation being considered to further restrict the access to tobacco and cigarettes will definitely drive the creation of this market.

In summary the SBC recommends the Board of Supervisors consider:

- Do an analysis on the effect of raising the legal purchase age from 18 to 21 to determine if it does meet its object of reducing youth access and addiction.
- Amend the law so that it also restricts any online sales and delivery of flavored tobacco products into San Francisco.

Thank you for considering the Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi  
Director, Office of Small Business

cc: Malia Cohen, Board of Supervisors  
Ahsha Safai, Board of Supervisors  
London Breed, Board of Supervisors  
Mark Farrell, Board of Supervisors  
Jeff Sheehy, Board of Supervisors  
Katy Tang, Board of Supervisors  
Nicole Elliott, Mayor's Office  
Mawuli Tugbenyoh, Mayor's Office  
Lisa Pagan, Office of Economic and Workforce Development  
Erica Major, Public Safety & Neighborhood Services Committee  
OFFICE OF SMALL BUSINESS • SMALL BUSINESS COMMISSION



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Smoker's Outlet Online, Inc: New Order # 110508928

**From :** Smoker's Outlet Customer Service <customerservice@smokersoutletonline.com>

Mon, May 01, 2017 10:22 AM

**Subject :** Smoker's Outlet Online, Inc: New Order # [REDACTED]**To :** Regina Dick-Endrizzi [REDACTED]

# Smoker's Outlet Online

Hello, Regina Dick-Endrizzi

Thank you for your order from Smoker's Outlet Online, Inc. Once your package ships we will send an email with a link to track your order. You can check the status of your order by [logging into your account](#). If you have any questions about your order please contact us at [customerservice@smokersoutletonline.com](mailto:customerservice@smokersoutletonline.com) or call us at 717-718-1486 or 888-802-2354 M-F 8am-7pm EST Monday - Friday, 8am - 7pm EST.

Your order confirmation is below. Thank you again for your business.

Your Order [REDACTED] (placed on May 1, 2017 1:21:55 PM EDT)

#### Billing Information:

Regina Dick-Endrizzi

[REDACTED]  
SAN FRANCISCO, California, [REDACTED]

United States

T: (415) 902-4573

#### Payment Method:

Credit Card (can be saved)

Credit Card Type:

[REDACTED]

Card Number:

[REDACTED]

#### Shipping Information:

Regina Dick-Endrizzi

[REDACTED]  
SAN FRANCISCO, California, 9[REDACTED]

United States

T: (415) 902-4573

#### Shipping Method:

UPS - UPS 2nd Day Air®

| Item                                      | SKU                 | Qty | Subtotal       |
|---|---------------------|-----|----------------|
| Middleton's Cherry Blend 10 x 5           | JM19                | 1   | \$41.33        |
| Golden Harvest Pipe Tobacco 6 oz Mint     | RO95-Mt             | 1   | \$5.38         |
| Good Stuff Pipe Tobacco 6 oz Menthol Gold | RS65-MG             | 1   | \$5.77         |
|   | Subtotal            |     | \$52.48        |
|   | Shipping & Handling |     | \$30.50        |
|   | 10 Reward points    |     | -\$0.10        |
|   | <b>Grand Total</b>  |     | <b>\$82.88</b> |

**Smoker's Outlet Online, Inc: New Order # 110501436**

**From :** Smoker's Outlet Customer Service <customerservice@smokersoutletonline.com>

Tue, Apr 18, 2017 12:56 PM

**Subject :** Smoker's Outlet Online, Inc: New Order # [REDACTED]

**To :** Regina Dick-Endrizzi [REDACTED]

# Smoker's Outlet Online

Hello, Regina Dick-Endrizzi

Thank you for your order from Smoker's Outlet Online, Inc. Once your package ships we will send an email with a link to track your order. You can check the status of your order by [logging into your account](#). If you have any questions about your order please contact us at [customerservice@smokersoutletonline.com](mailto:customerservice@smokersoutletonline.com) or call us at 717-718-1486 or 888-802-2354 M-F 8am-7pm EST Monday - Friday, 8am - 7pm EST.

Your order confirmation is below. Thank you again for your business.

Your Order # [REDACTED] (placed on April 18, 2017 3:56:03 PM EDT)

**Billing Information:**

Regina Dick-Endrizzi

[REDACTED]  
SAN FRANCISCO, California, 9[REDACTED]

United States

T: (415) 902-4573

**Payment Method:**

**Credit Card (can be saved)**

**Credit Card Type:**

[REDACTED]  
**Number:**

X [REDACTED]

**Shipping Information:**

Regina Dick-Endrizzi

[REDACTED]  
SAN FRANCISCO, California, 9[REDACTED]

United States

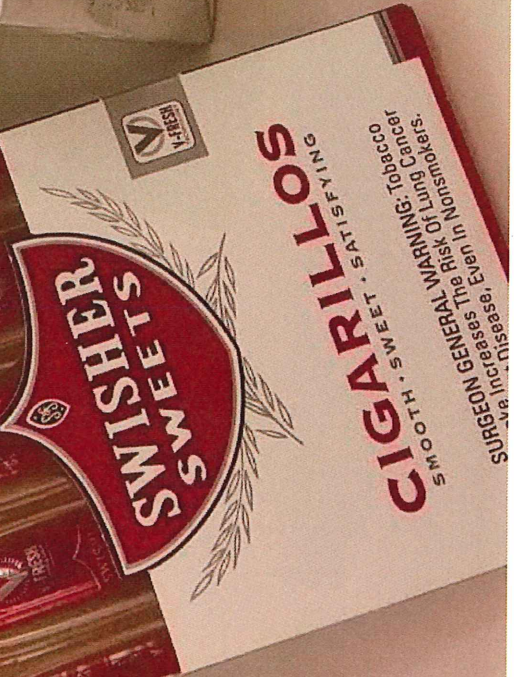
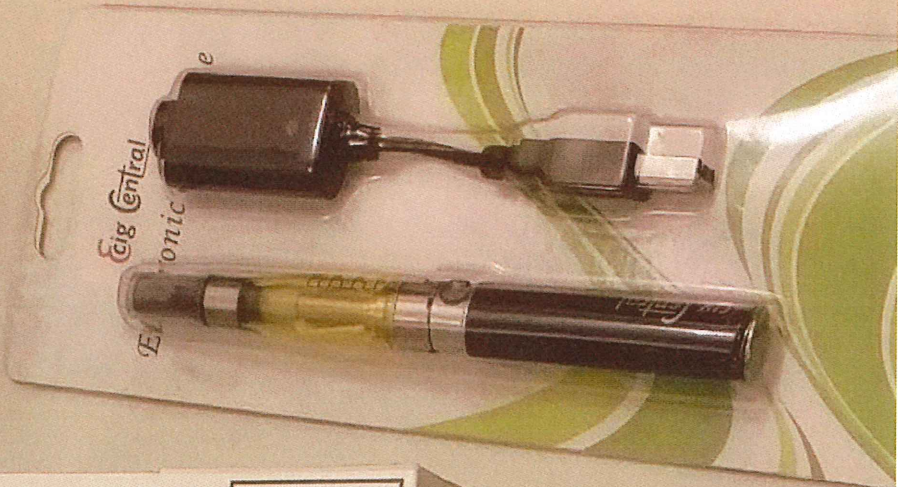
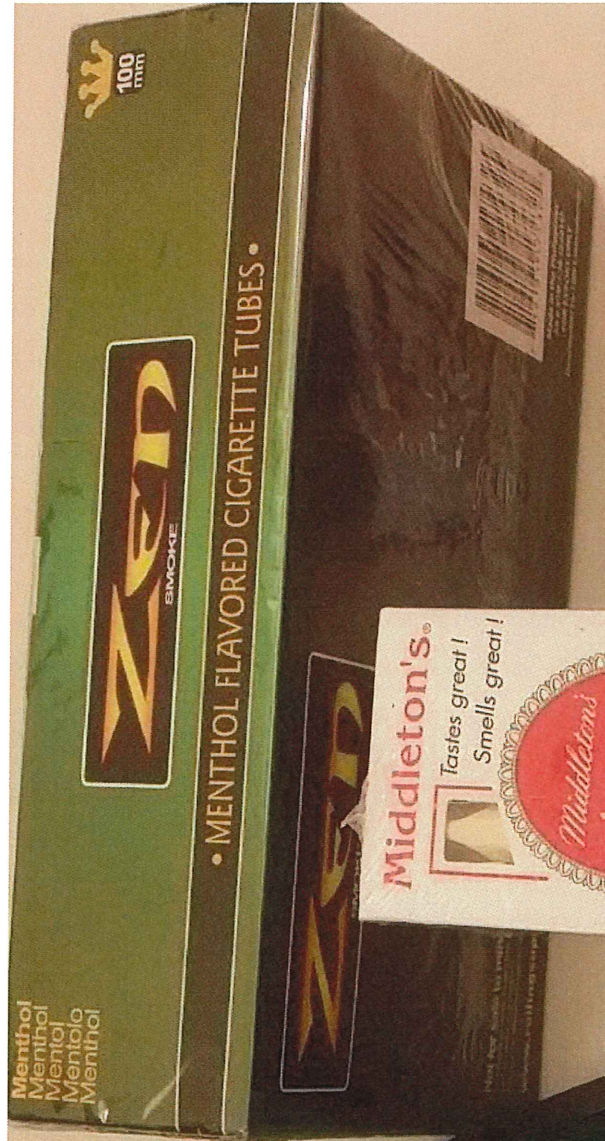
T: (415) 902-4573

**Shipping Method:**

UPS - UPS Ground

| Item                                       | SKU        | Qty                 | Subtotal       |
|--|------------|---------------------|----------------|
| Swisher Sweets Cigarillos 4 pack - Sweets  | HL154-S    | 1                   | \$1.99         |
| Zen Tubes 200 ct. Menthol 100 mm           | HI11-M-100 | 1                   | \$3.62         |
| Ecig Central EGO T CE4 Blister Pack-Yellow | ECBP-YE    | 1                   | \$9.95         |
|  |            | Subtotal            | \$15.56        |
|  |            | Shipping & Handling | \$17.21        |
|  |            | <b>Grand Total</b>  | <b>\$32.77</b> |

Thank you,  
**Smoker's Outlet Online Customer Support**



TP-NC-644

