

1 [Prohibiting Pharmacies from Selling Tobacco Products.]

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3 **Ordinance amending the San Francisco Health Code by amending Section 1009.53 and**
4 **adding Section 1009.60 and Article 19J, to prohibit pharmacies from selling tobacco**
5 **products.**

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. Findings.

11 The Board of Supervisors hereby finds and declares as follows:

- 12 1. Tobacco is the leading cause of preventable death in the United States and the
13 leading risk factor contributing to the burden of disease in the world's high-income countries;
- 14 2. In addition to its health impact, tobacco related death and disease has an
15 economic impact. In 1999, the economic costs of smoking in California were estimated to be
16 \$475 per resident or \$3,331 per smoker, for a total of nearly \$15.8 billion in smoking-related
17 costs (1999 dollars). Those same costs in 2008 dollars would be \$614 per resident or \$4,310
18 per smoker for a total of nearly \$20.4 billion dollars;
- 19 3. Twenty-three percent of San Franciscans have been diagnosed with high blood
20 pressure. The National Heart Lung and Blood Institute’s guidelines for the use of prescription
21 drugs in the treatment of high blood pressure call for smoking cessation;
- 22 4. Twenty percent of San Franciscans have been diagnosed with high cholesterol.
23 The National Heart Lung and Blood Institute’s guidelines for the use of prescription drugs in
24 the treatment of high cholesterol call for smoking cessation;

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1 5. The American Diabetes Association's standards of medical care in diabetes call
2 for smoking cessation as well as prescription drug therapy;

3 6. Thirteen percent of San Franciscans have asthma. The National Heart Lung
4 and Blood Institute's guidelines for the use of prescription drugs in the treatment of asthma
5 call for avoidance of tobacco smoke;

6 7. Through the sale of tobacco products, pharmacies convey tacit approval of the
7 purchase and use of tobacco products. This approval sends a mixed message to consumers
8 who generally patronize pharmacies for health care services;

9 8. In 1970, The American Pharmaceutical Association stated that mass display of
10 cigarettes in pharmacies is in direct contradiction to the role of a pharmacy as a public health
11 facility;

12 9. The Tobacco Education and Research Oversight Committee for California, as
13 well as the American Pharmacists Association, the California Pharmacists Association, and
14 the California Medical Association have called for the adoption of state and local prohibitions
15 of tobacco sales in drugstores and pharmacies;

16 10. A majority (78%) of independently owned pharmacies in California have become
17 tobacco free; however, tobacco products are still sold by 94% of chain drugstores;

18 11. Of the independently owned pharmacies that are tobacco-free, 88% report they
19 have experienced either no loss or an increase in business since removing tobacco from their
20 shelves;

21 12. An overwhelming percentage of California consumers (96.8%) indicate that they
22 would continue to patronize their pharmacy or drugstore as often or more often if it stopped
23 selling tobacco products;

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1 13. A large majority (72.3%) of California consumers are opposed to the sale of
2 tobacco products in drugstores and nearly one-half of California smokers (49.7%) disagree or
3 strongly disagree that tobacco products should be sold through drugstores;

4 14. Only 13.2% of chain drugstore pharmacists are in favor of the sale of tobacco
5 products in drugstores;

6 15. In a 2003-2004 national survey of pharmacy students, nearly three-quarters
7 (71%) of those surveyed were against tobacco sales in pharmacies. These findings were
8 aligned with the 2003 resolution of the American Association of Colleges of Pharmacy that
9 encourages pharmacy schools to use only training sites that do not sell tobacco products;

10 16. Pharmacies and drugstores are among the most accessible and trusted sources
11 of health information among the public;

12 17. Clinicians can have a significant effect on smokers' probability of quitting
13 smoking;

14 18. Most health care institutions have adopted policies that have banned tobacco
15 sales and created smoke-free environments. In spite of numerous resolutions and
16 recommendations by state and national pharmacy organizations calling for pharmacies to stop
17 selling tobacco, some community pharmacies in the United States continue to sell tobacco
18 products.

19 19. A study of 100 randomly selected San Francisco pharmacies found that in 2003,
20 61% of pharmacies sold cigarettes, significantly less compared to 89% of pharmacies in 1976.
21 Most of this decrease was among independently owned pharmacies.

22 20. In a 2003 study of San Francisco pharmacies' merchandising of cigarettes, 84%
23 of pharmacies selling cigarettes displayed tobacco advertising.

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1 21. Prescription drug sales for chain drugstores represent a significantly higher
2 percentage of total sales than for grocery stores and big box stores that contain pharmacies.
3 According to the 2007 Rite Aide Annual Report, prescription drugs sales represented 63.7%
4 of total sales in fiscal 2007. Walgreen's 2007 Annual Report documented prescription sales as
5 approximately 65% of net sales that year. Pharmacy sales at Safeway have been estimated
6 at 7.5% of annual volume. Costco's prescription sales generated 1.5% of total revenue in
7 2002.

8 Section 2. The San Francisco Health Code is hereby amended by amending Section
9 1009.53 and adding Section 1009.60 and Article 19J, to read as follows:

10 **SEC. 1009.53. APPLICATION PROCEDURE: INSPECTION OF PREMISES;**
11 **ISSUANCE AND DISPLAY OF PERMIT.**

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

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

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1 (b) Inspection by Director. Upon receipt of a completed application and fees, the
2 Director may inspect the location at which tobacco sales are to be permitted. The Director
3 may also ask the applicant to provide additional information that is reasonably related to the
4 determination whether a permit may issue.

5 (c) Issuance of Permit. If the Director is satisfied that the applicant has met the
6 requirements of this Article and that issuance of the permit will not violate any law, the
7 Department shall issue the permit. No permit shall issue if the Director finds that the applicant
8 is in violation of San Francisco Health Code section 1009.1 (regulating cigarette vending
9 machines), ~~or~~ San Francisco Police Code section 4600.3 (regulating the self-service
10 merchandising of tobacco products), *or if the applicant is a pharmacy prohibited from selling*
11 *tobacco products under Article 19J*. No permit shall issue if the application is incomplete or
12 inaccurate.

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

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18 **SEC. 1009.60. CONDUCT VIOLATING TOBACCO CONTROL LAWS**

19 *(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has*
20 *engaged in any conduct that violates local, state, or federal law applicable to tobacco products or*
21 *tobacco sales, the Director may suspend a tobacco sales permit as set forth in section 1009.66, impose*
22 *administrative penalties as set forth in section 1009.67, or both suspend the permit and impose*
23 *administrative penalties.*

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

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5 **ARTICLE 19J: PROHIBITING PHARMACIES FROM SELLING TOBACCO PRODUCTS**

6 **SEC. 1009.91. DEFINITIONS.**

7 (a) "Big Box Store" shall mean a single retail establishment occupying an area in excess of
8 100,000 gross square feet.

9 (b) "Director" shall mean the Director of the Department of Public Health or his or her
10 designee.

11 (c) "General Grocery Store" shall have the same meaning as set forth in Planning Code
12 Section 790.102(a) or any successor provisions.

13 (d) "Person" shall mean any individual person, firm, partnership, association, corporation,
14 company, organization, or legal entity of any kind.

15 (e) "Pharmacy" shall mean a retail establishment in which the profession of pharmacy by a
16 pharmacist licensed by the State of California in accordance with the Business and Professions Code is
17 practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods
18 in addition to prescription pharmaceuticals. For purposes of this Article, "pharmacy" includes retail
19 stores commonly known as drugstores.

20 (f) "Tobacco Product" shall mean any substance containing tobacco leaf, including but not
21 limited to cigarettes, cigars, pipe, tobacco, snuff, chewing tobacco, and dipping tobacco.

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23 **Sec. 1009.92. PROHIBITION AGAINST TOBACCO PRODUCT SALES AT**
24 **PHARMACIES.**

1 No person shall sell tobacco products in a pharmacy, except as provided in Sec. 1009.93.

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3 **Sec. 1009.93. EXCEPTIONS.**

4 The prohibition against tobacco sales at pharmacies in Section 1009.92 shall not apply to:

5 (a) General Grocery Stores.

6 (b) Big Box Stores.

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8 **Sec. 1009.94. PENALTIES AND ENFORCEMENT.**

9 Administrative penalties shall be assessed and collected by the Director in accordance with San
10 Francisco Administrative Code Chapter 100, a copy of which is on file in Board of Supervisors File No.
11 _____ and which is hereby incorporated by reference.

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13 **SEC. 1009.95. EXPIRATION OF PERMIT TO SELL TOBACCO.**

14 Any permit to sell tobacco issued to a pharmacy pursuant to Article 19H shall expire on
15 September 30, 2008, and shall not be renewed if sales of tobacco by that pharmacy are prohibited
16 under this Article.

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18 **SEC. 1009.96. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

19 The Director may issue and amend rules, regulations, standards, guidelines, or conditions to
20 implement and enforce this Article.

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22 **SEC. 1009.97. PREEMPTION.**

23 In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights
24 or authority of the State to do those things that are required, directed, or expressly authorized by

1 federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to
2 prohibit that which is prohibited by federal or state law.

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4 **SEC. 1009.98. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
5 **WELFARE.**

6 In undertaking the adoption and enforcement of this Article, the City and County is assuming an
7 undertaking only to promote the general welfare. The City does not intend to impose the type of
8 obligation that would allow a person to sue for money damages for an injury that the person claims to
9 suffer as a result of a City officer or employee taking or failing to take an action with respect to any
10 matter covered by this Article.

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12 **SEC. 1009.99. SEVERABILITY.**

13 If any of the provisions of this Article or the application thereof to any person or circumstance
14 is held invalid, the remainder of this Article, including the application of such part or provisions to
15 persons or circumstances other than those to which it is held invalid, shall not be affected thereby and
16 shall continue in full force and effect. To this end, the provisions of this Article are severable.

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

20 By: _____
21 Cecilia T. Mangoba
22 Deputy City Attorney