

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

October 29, 2014

File No. 141098

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

Dear Ms. Jones:

On October 21, 2014, Supervisor Eric Mar introduced the following proposed legislation:

File No. 141098

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

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in blue ink, appearing to be "Derek Evans".

By: Derek Evans, Assistant Clerk
Neighborhood Services and Safety Committee

Attachment

c: 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.

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

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

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

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

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

Section 2. Article 19H of the Health Code is hereby amended by revising and renumbering (new section numbers in parentheses) Sections 1009.50 (19H.1), 1009.51 (19H.2), 1009.53 (19H.4), 1009.551 (19H.5), 1009.56 (19H.9), 1009.57 (19H.10), 1009.58 (19H.11), 1009.59 (19H.12), 1009.60 (19H.13), 1009.61 (19H.14), 1009.62 (19H.15), 1009.63 (19H.16), 1009.64 (19H.17), 1009.66 (19H.19), 1009.68 (19H.21), and 1009.73 (19H.25);

1 renumbering (new section numbers in parentheses) Sections 1009.52 (19H.3), 1009.54
2 (19H.7), 1009.55 (19H.8), 1009.65 (19H.18), 1009.67 (19H.20), 1009.69 (19H.22), 1009.71
3 (19H.23), 1009.72 (19H.24), 1009.74 (19H.26), 1009.75 (19H.27), 1009.76 (19H.28), and
4 1009.77 (19H.29); and adding Sections 19H.5 and 19H.6, resulting in Sections 19H.1-19H.29,
5 to read as follows:

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

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

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

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

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

1 ~~P~~products, except in places to which access by minors is prohibited by law (~~San Francisco~~
2 Police Code section 4600.3), ~~and~~ prohibit smoking in enclosed areas and sports stadiums (~~San~~
3 ~~Francisco~~ Health Code Article 19Fsection 1009.22) and prohibit the use of electronic cigarettes
4 where smoking is not allowed (Health Code Article 19N).

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

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

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

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

1 *(f) ~~E.~~ There are approximately 970 outlets in San Francisco that are licensed to sell tobacco,*
2 *that is about 1 retailer for every 111 kids in the community compared to California generally where*
3 *there are approximately 36,700 licensed tobacco retail stores in California – one for every 254*
4 *children. The California Department of Health Services reports that 26.7 percent of California*
5 *adolescents believe it is easy to buy a pack of cigarettes.*

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

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

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

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

20 *(i) Empirical research connects lower densities of retail outlets with lower consumption of*
21 *tobacco, particularly among youth. Higher tobacco retail density encourages smoking by making*
22 *cigarettes more accessible and available, by normalizing tobacco use, and through increasing*
23 *environmental cues to smoke. Research focused on California has found a higher prevalence of*
24 *current smoking and experimental smoking among students at schools in areas with a higher density of*
25 *tobacco outlets. Prevalence of smoking was higher among students at schools in neighborhoods with*

1 five or more stores that sell tobacco than among students at schools in neighborhoods without any
2 stores that sell tobacco.

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

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

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

1 (m) Restaurants, and other non-traditional tobacco retailers in California had the highest
2 illegal sale rate to minors, 20.3% or higher on average and nearly three-times higher than traditional
3 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 ~~t~~Tobacco ~~p~~Products.

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

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

17 "Restaurant" means a retail food Establishment that primarily stores, packages, serves,
18 vends, or otherwise prepares food for human consumption on or off premises. "Restaurant" includes,
19 but is not limited to Establishments primarily engaged in providing (1) food services to patrons who
20 order and are served while seated on the premises, and pay after eating, (2) food services where
21 patrons generally order and pay before eating on the premises, or (3) take-out food services where
22 patrons order ready-to-eat food generally intended for consumption off the premises. "Restaurant"
23 also includes separately owned food facilities that are located in a grocery store but does not include
24 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 Products" 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 products to any person by any person who operates an
9 establishment. "Tobacco sales" includes any display of ~~t~~Tobacco 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 sales permit shall be
21 submitted in the name of the person(s) proposing to engage in the sale of ~~t~~Tobacco 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 by the Planning
25 Department. A separate ~~a~~Application is required for each location where ~~t~~Tobacco sales are

1 to be conducted. All aApplications shall be submitted on a form supplied by the Department
2 and shall contain the following information:

3 1. The name, address, email address, and telephone number of the
4 aApplicant;

5 2. The eEstablishment name, address, email address, and telephone
6 number for each location for which a tTobacco sSales permit is sought;

7 3. Such other information as the Director deems appropriate, including
8 the Aapplicant's type of business, and whether the aApplicant has previously been issued a
9 permit under this Article that is, or was at any time, suspended or revoked. No permit shall be
10 issued if the Application is incomplete or inaccurate.

11 (b) **Inspection by Director.** Upon receipt of a completed aApplication and
12 fees, the Director may inspect the location at which tTobacco sSales are to be permitted. The
13 Director may also ask the aApplicant to provide additional information that is reasonably
14 related to the determination whether a permit may issue.

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

19 (d)(e) Issuance of Permit. If the Director is satisfied that the aApplicant has
20 met the requirements of this Article and that issuance of the permit will not violate any law, the
21 Department shall issue the permit. An Establishment may not sell Tobacco Products until the permit
22 is issued. No permit shall issue if the Director finds that the Applicant is in violation of San Francisco
23 Health Code section 1009.1 (regulating cigarette vending machines), San Francisco Police Code
24 section 4600.3 (regulating the self-service merchandising of tobacco products), if the Applicant is a
25

1 ~~pharmacy prohibited from selling tobacco products under Article 19J. No permit shall issue if the~~
2 ~~Application is incomplete or inaccurate.~~

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

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

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

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

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

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

22 (5) No new permit shall be issued in any supervisorial district that has 45 or
23 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 **SEC. ~~1009.551~~19H.5 DENSITY CAP**

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

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

18
19 **SEC. 19H.6 INTERIM EXCEPTION FOR NEW PERMITS WHERE SALE OF THE**
20 **ESTABLISHMENT IS PENDING.**

21 Applications submitted under Section 19H.4 on or before September 1, 2014 for a new permit
22 are not subject to Section 19H.5 where an Establishment has held a permit to sell Tobacco Products for
23 seven or more years at the location subject to the sale without any transfer of ownership if the
24 Establishment submits an affidavit to accompany the Application stating that no change of ownership
25

1 has occurred within the prior seven years and that the current permit holder had been in contract with
2 a buyer of the Establishment as of September 1, 2014.

3 **SEC. 19H.71009.54. PERMIT AND ANNUAL LICENSE FEES.**

4 * * * *

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

7 * * * *

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

9 The Director may enforce all provisions of this Article. Specific grounds for
10 enforcement are set forth in sections 19H.101009.57 through 19H.181009.65. Upon presentation
11 of proper credentials, the Director may enter and inspect at any time during regular business
12 hours any eEstablishment that is engaging in tTobacco sSales, or is suspected by the Director
13 of engaging in such sales.

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

16 (a) Upon a decision by the Director that the pPermittee or the pPermittee's agent or
17 employee has engaged in any conduct that violates *San Francisco* Health Code Article
18 19Dsection 1009.1 (regulating cigarette vending machines), the Director may suspend a
19 tTobacco sSales permit as set forth in section 19H.191009.66, impose administrative penalties
20 as set forth in section 19H.201009.67, or both suspend the permit and impose administrative
21 penalties.

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

1 **SEC. 19H.111009.58. CONDUCT VIOLATING ~~SAN FRANCISCO~~ POLICE CODE**
2 **SECTION 4600.3 (REGULATING THE SELF-SERVICE MERCHANDISING OF TOBACCO**
3 **PRODUCTS).**

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~~ Police Code section 4600.3
6 (regulating the self-service merchandising of tobacco products), the Director may suspend a
7 ~~Tobacco s~~Sales permit as set forth in section 19H.191009.66, impose administrative penalties
8 as set forth in section 19H.201009.67, or both suspend the permit and impose administrative
9 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.121009.59. CONDUCT VIOLATING ~~SAN FRANCISCO~~ HEALTH CODE**
14 **~~ARTICLE 19F~~SECTION 1009.22 (PROHIBITING SMOKING IN ENCLOSED AREAS AND**
15 **SPORTS STADIUMS).**

16 (a) Upon a decision by the Director that the *p*Permittee or the *p*Permittee's agent or
17 employee has engaged in any conduct that violates ~~San Francisco~~ Health Code Article
18 19Fsection 1009.22 (prohibiting smoking in enclosed areas and sports stadiums), the Director
19 may suspend a ~~Tobacco s~~Sales permit as set forth in section 19H.191009.66, impose
20 administrative penalties as set forth in section 19H.201009.67, or both suspend the permit and
21 impose administrative penalties.

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

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

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

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

10 **SEC. ~~19H.141009.61~~. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION**
11 **308 (PROHIBITING THE SALE OF TOBACCO TO MINORS).**

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

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

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

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

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

1 **SEC. 19H.161009.63. FRAUDULENT PERMIT APPLICATIONS.**

2 (a) Upon a decision by the Director that the *p*Permittee or the *p*Permittee's agent or
3 employee has obtained tobacco *s*ales permit from the Department by fraudulent or willful
4 misrepresentation, the Director may suspend a *t*Tobacco *s*Sales permit as set forth in section
5 19H.191009.66.

6 (b) Upon a final decision by the Director that the *p*Permittee or the *p*Permittee's
7 agent or employee has obtained a *t*Tobacco *s*Sales permit from the Department by fraudulent
8 or willful misrepresentation, the Director may impose administrative penalties as set forth in
9 section 19H.201009.67.

10 (c) Upon a final decision by the Director that the *p*Permittee or the *p*Permittee's
11 agent or employee has obtained a *t*Tobacco *s*Sales permit from the Department by fraudulent
12 or willful misrepresentation, the Director may revoke a *t*Tobacco *s*Sales permit.

13 (d) Upon a final decision by the Director that the *p*Permittee or the *p*Permittee's
14 agent or employee has obtained a *t*Tobacco *s*Sales permit from the Department by fraudulent
15 or willful misrepresentation, the Director may impose administrative penalties in addition to
16 either suspending or revoking the *t*Tobacco *s*Sales permit.

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

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

24 **SEC. 19H.171009.64 SELLING TOBACCO WITHOUT A PERMIT.**

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

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

8 (c) The City Attorney may maintain an action for injunction to restrain any
9 person from selling tobacco without a valid tobacco sales permit. In any such action, the City
10 Attorney may seek civil penalties and may seek a judicial determination that a person must
11 pay any administrative penalties. The person against whom an injunction issues also shall be
12 liable for the costs and attorney's fees incurred by the City and County of San Francisco in
13 bringing a civil action to enforce the provisions of the section.

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

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

20 * * * *

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

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

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

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

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

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

6 **SEC. 19H.2091009.67. ADMINISTRATIVE PENALTY.**

7 * * * *

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

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

17 **SEC. 19H.221009.69. NOTICE OF INITIAL DETERMINATION.**

18 * * * *

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

20 * * * *

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

22 * * * *

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

24 Nothing in this Article shall affect any other remedies which are available to the City
25 and County under any law, including (1) *San Francisco Health Code Article 19Dsection 1009.1*

1 (regulating cigarette vending machines); (2) *San Francisco* Police Code section 4600.3
2 (regulating the self-service merchandising of tobacco products); (3) *San Francisco* Health Code
3 *Article 19Fsection 1009.22* (prohibiting smoking in enclosed areas and sports stadiums); (4)
4 California Penal Code section 308 (regulating sales of tobacco products to minors); and (5)
5 California Labor Code section 6404.5 (prohibiting smoking in enclosed places of
6 employment).

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

8 * * * *

9 **SEC. ~~19H.271009.75~~. CITY UNDERTAKING LIMITED TO PROMOTION OF THE**
10 **GENERAL WELFARE.**

11 * * * *

12 **SEC. ~~19H.281009.76~~. PREEMPTION.**

13 * * * *

14 **SEC. ~~19H.291009.77~~. SEVERABILITY.**

15 * * * *

16
17 Section 3. The Business and Tax Regulations Code is hereby amended by revising
18 Section 249.16, to read as follows:

19 **SEC. 249.16. TOBACCO LICENSE PERMIT FEE.**

20 Every person, firm or corporation engaged in tobacco sales shall pay an annual license
21 fee of ~~\$188~~ \$200 to the Tax Collector. The license fee set forth in this Section shall be paid
22 annually on or before March 31, in accordance with the provisions of Section 76.1 of the
23 Business and Tax Regulations Code.

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

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

12
13 Section 6. No Conflict with Federal or State Law. Nothing in this ordinance shall be
14 interpreted or applied so as to create any requirement, power, or duty in conflict with any
15 federal or state law.

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By:


20 ALEETA M. VAN RUNKLE
Deputy City Attorney

21 n:\legana\as2014\1300508\00965737.doc
22
23
24
25