

1 [Health Code - Restrictions on Sale and Use of Electronic Cigarettes]

2

3 **Ordinance amending the Health Code to prohibit the use of electronic cigarettes where**  
4 **smoking is otherwise prohibited; require a tobacco permit for the sale of electronic**  
5 **cigarettes; prohibit the sale of electronic cigarettes where the sale of tobacco products**  
6 **is otherwise prohibited; and making environmental findings.**

7

8 NOTE: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strike-through italics Times New Roman*~~.  
10 Board amendment additions are double-underlined;  
11 Board amendment deletions are ~~strike-through normal~~.

12

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

14

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

19

20 Section 2. The San Francisco Health Code is hereby amended by adding Article 19N,  
21 Sections 19N.1 – 19N.9, to read as follows:

22 **SEC. 19N.1 FINDINGS AND STATEMENT OF PURPOSE.**

23 (a) Electronic smoking devices, commonly referred to as electronic cigarettes or e-cigarettes,  
24 are battery-operated devices that may resemble cigarettes, although they do not contain tobacco leaf.  
25 People who use electronic smoking devices inhale vaporized liquid nicotine extracted from tobacco, or  
inhale other vaporized liquids, created by heat through an electronic ignition system, and exhale the  
vapor in a way that mimics smoking.

1 (b) Electronic cigarettes are presently available for purchase and use in San Francisco.

2 (c) The FDA's Center for Drug Evaluation and Research, Office of Compliance purchased two  
3 samples of electronic cigarettes and components from two leading brands. These samples included 18  
4 of the various flavored, nicotine, and no-nicotine cartridges offered for use with these products. These  
5 cartridges were obtained to test some of the ingredients contained in them and inhaled by users of  
6 electronic cigarettes. The FDA's Center for Drug Evaluation and Research, Division of  
7 Pharmaceutical Analysis (DPA) analyzed the cartridges from these electronic cigarettes for nicotine  
8 content and for the presence of other tobacco constituents, some of which are known to be harmful to  
9 humans, including those that are potentially carcinogenic or mutagenic. The DPA's analysis of the  
10 electronic cigarette samples showed:

11 (1) The products contained detectable levels of known carcinogens and toxic chemicals to  
12 which users could be exposed.

13 (2) Quality control processes used to manufacture these products are inconsistent or non-  
14 existent.

15 (3) Tobacco-specific impurities suspected of being harmful to humans—*anabasine, myosmine,*  
16 and *β-nicotyrine*—were detected in a majority of the samples tested.

17 (4) Three different electronic cigarette cartridges with the same label were tested and each  
18 cartridge emitted a markedly different amount of nicotine with each puff. The nicotine levels per puff  
19 ranged from 26.8 to 43.2 mcg nicotine/100 mL puff.

20 (d) The Surgeon General has found that the chemical nicotine is a powerful pharmacologic  
21 agent that acts in the brain and throughout the body and is highly addictive. The United States  
22 Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or  
23 heroin and is a highly toxic substance. Use of nicotine in any form may cause or contribute to  
24 cardiovascular disease, complications of hypertension, reproductive disorders, cancers of many types,  
25 and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux.

1           (e) The FDA has raised concerns that electronic cigarettes, including but not limited to  
2 flavored electronic cigarettes, can increase nicotine addiction among young people and may lead youth  
3 to try conventional tobacco products. A CDC study showed that in 2011 4.7% of all high schoolers had  
4 tried e-cigarettes and that in 2012 that number increased to 10.0% of all high schoolers. Electronic  
5 cigarettes may not be legally sold to minors in California. Electronic smoking devices and other  
6 unapproved nicotine delivery products have a high appeal to youth due to their high tech design and  
7 availability in child-friendly flavors like cotton candy, bubble gum, chocolate chip cookie dough and  
8 cookies and cream milkshake.

9           (f) Health authorities have also expressed concerns that the vapors released into the air  
10 through the use of an electronic cigarette present a danger to others who breathe them.

11           (g) The use of an electronic cigarette in public is often indistinguishable from the use of  
12 traditional tobacco products, prompting confusion among members of the public wherever smoking is  
13 prohibited. Consequently, persons who smoke traditional tobacco products may be induced to do so in  
14 areas where smoking is illegal under the mistaken belief that smoking is legal in such areas, or that the  
15 ban on smoking in such areas is not being enforced.

16           (h) Owners of establishments such as office buildings and restaurants encounter similar  
17 obstacles seeking to comply with the laws prohibiting smoking in certain locations. An owner may  
18 request that a patron stop smoking cigarettes in a restaurant only to have the patron demonstrate that it  
19 is an electronic cigarette. The Owner may also be placed in the position of having to confront and  
20 examine the cigarettes of any number of customers absent a prohibition on the use of electronic  
21 cigarettes where traditional cigarettes are banned.

22           (i) The agencies charged with enforcing compliance in enclosed and unenclosed spaces will  
23 similarly have to devote considerable time and resources determining the individuals smoking  
24 electronic cigarettes versus traditional cigarettes.

1            (j) Some agencies in San Francisco have already adopted restrictions on e-cigarette usage  
2 including San Francisco General Hospital, Laguna Honda Hospital, AT&T Ballpark, University of  
3 California-San Francisco, San Francisco Department of Public Health and the San Francisco  
4 International Airport.

5            **SEC. 19N. 2 DEFINITIONS.**

6            (a) "Director" means the Director of Public Health or his or her designee.

7            (b) "Electronic Cigarette" or "E-cigarette" means any device with a heating element, a  
8 battery, or an electronic circuit that provides nicotine or other vaporized liquids to the user in a  
9 manner that simulates smoking tobacco.

10           (c) "Establishment" means any store, stand, booth, concession or other enterprise that engages  
11 in the retail sales of tobacco products and/or electronic cigarettes.

12           **SEC. 19N.3 TOBACCO SALES PERMIT REQUIRED.**

13           (a) An establishment must have a valid tobacco sales permit obtained pursuant to Health Code  
14 Section 1009.52 to sell electronic cigarettes.

15           (b) The Director may enforce this section pursuant to Articles 19 et seq. of the Health Code  
16 including but not limited to Article 19H.

17           **SEC. 19N.4 PROHIBITING THE USE OF ELECTRONIC CIGARETTES WHEREVER**  
18 **SMOKING OF TOBACCO PRODUCTS IS BANNED .**

19           (a) The use of electronic cigarettes is prohibited wherever smoking of tobacco products is  
20 prohibited by law including Articles 19 et seq. of the Health Code.

21           (b) The Director may enforce this section pursuant to Articles 19 et seq. of the Health Code  
22 including but not limited to the Articles prohibiting smoking in certain spaces or areas.

23           **SEC. 19N.5 PROHIBITING THE SALE OF ELECTRONIC CIGARETTES WHEREVER**  
24 **THE SALE OF TOBACCO PRODUCTS IS PROHIBITED.**

1            a) The sale of electronic cigarettes is prohibited wherever the sale of tobacco products is  
2 prohibited by law, including as prohibited in Articles 19 et seq. of the Health Code.

3            b) The Director may enforce this section pursuant to Articles 19 et seq. of the Health Code  
4 including but not limited to Article 19J.

5            **SEC. 19N.6 CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**  
6 **WELFARE.**

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

11            **SEC. 19N.7 RULES AND REGULATIONS.**

12            The Director, after a noticed public hearing, may adopt rules and regulations to carry out the  
13 provisions of this Article. Such rules and regulations shall take effect 15 days after the public hearing.  
14 Violation of any such rule or regulation may be grounds for administrative or civil action against the  
15 permittee pursuant to this Article.

16            **SEC. 19N.8 PREEMPTION.**

17            (a) Nothing in this Article shall be interpreted or applied so as to create any power, duty or  
18 obligation in conflict with, or preempted by, any Federal or State law. Even if not preempted by  
19 Federal or State law, the provisions of this Article shall not apply if the Federal or State law is more  
20 restrictive.

21 //

22 //

23 //

24 //

25 //

1           **(b) This Article shall not apply to any FDA-approved product marketed for therapeutic**  
2 **purposes.**

3           **(c) This Article shall not affect any laws or regulations regarding medical cannabis.**

4           **SEC. 19N.9 SEVERABILITY.**

5           **If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Article or**  
6 **any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of**  
7 **competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining**  
8 **portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would**  
9 **have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof**  
10 **irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses,**  
11 **or phrases be declared unconstitutional, or invalid, or ineffective.**

12  
13           Section 3. Effective Date. This ordinance shall become effective 30 days after  
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
16 of Supervisors overrides the Mayor's veto of the ordinance.

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

19 By: \_\_\_\_\_  
20 Aleeta M. Van Runkle  
21 Deputy City Attorney