

File No. 151179

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date February 22, 2016

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Board of Education Resolution No. 161-26A2</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Small Business Commission Recommendation, dtd 1/26/16</u> |
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Completed by: Alisa Somera

Date February 18, 2016

Completed by: _____

Date _____

1 [Health Code - Banning the Sale of Tobacco Products to Persons Aged 18-20]

2
3 **Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco**
4 **products, including smokeless tobacco and electronic cigarettes, to persons aged 18,**
5 **19, or 20.**

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

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

14 Section 1. The Health Code is hereby amended by adding Section 19H.14-1, to read
15 as follows:

16 **SEC. 19H.14-1. CONDUCT VIOLATING HEALTH CODE ARTICLE 19P (PROHIBITING**
17 **THE SALE OF TOBACCO PRODUCTS TO PERSONS AGED 18, 19, OR 20).**

18 (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee
19 has engaged in any conduct that violates Health Code Section 19P.3 (Sale or Distribution of Tobacco
20 Products to Persons Aged 18, 19, or 20 Prohibited), the Director may suspend a Tobacco Sales permit
21 as set forth in Section 19H.19.

22 (b) Upon a decision by the Director that the Permittee or the Permittee's agent or employee
23 has engaged in any conduct that violates Health Code Section 19P.4 (Signage), the Director may
24 suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set
25 forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

1 (c) The Director shall commence enforcement of this Section 19H.14-1 by serving either a
2 notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22 of
3 this Article 19H; provided, however, that for a first violation during the period July 1, 2016 through
4 June 30, 2017, the Director may serve only a notice of correction and may not serve a notice of initial
5 determination or impose a permit suspension or administrative penalty. For a second violation
6 occurring within the first twelve months, or a first violation occurring after the first twelve months, the
7 Director may serve either a notice of correction under Section 19H.21 or a notice of initial
8 determination under Section 19H.22, and may impose a permit suspension or administrative penalty in
9 accordance with subsections (a) and (b), above.

10
11 Section 2. The Health Code is hereby amended by adding Article 19P, consisting of
12 Sections 19P.1 through 19P.7, to read as follows:

13
14 **ARTICLE 19P: PROHIBITING THE SALE OF TOBACCO PRODUCTS TO**
15 **PERSONS AGED 18, 19, OR 20**

16
17 **SEC. 19P.1. FINDINGS.**

18 Tobacco use remains the leading cause of preventable death in the United States, killing more
19 than 480,000 people each year. It is known to cause cancer, heart disease, and respiratory diseases,
20 among other health disorders.

21 Each day, 700 children under the age of 18 become regular, daily smokers; and almost one-
22 third will eventually die from smoking. If current trends continue, 5.6 million of today's youth will die
23 prematurely from a smoking-related illness.

1 According to a 2014 Report by the United States Surgeon General, cigarette smoking today is
2 even more dangerous than previously thought. Cigarette smoking has been linked to disease of nearly
3 all organs of the body.

4 The adverse health effects of tobacco use are not limited to smoking. The National Cancer
5 Institute and the International Agency for Research on Cancer report that use of smokeless tobacco
6 causes oral, pancreatic, and esophageal cancer; and may also cause heart disease, gum disease, and
7 oral lesions other than cancer, such as leukoplakia (precancerous white patches in the mouth).

8 Further, electronic cigarettes (also known as e-cigarettes) also present significant health risks.
9 E-cigarettes contain nicotine, a highly addictive neurotoxin. Exposure to nicotine during adolescence
10 can harm brain development and predispose youth to future tobacco use. In addition, electronic
11 cigarette aerosol has been found to contain at least ten chemicals that are on California's Proposition
12 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.

13 In addition to the adverse health impacts of tobacco use, the treatment of tobacco-related
14 diseases adds tremendous costs, in the billions of dollars, to this country's health care system. A 2014
15 report by the University of California, San Francisco estimated that in 2009, the cost of smoking in San
16 Francisco amounted to over \$380 million, including direct health care costs and indirect costs from
17 lost productivity due to illness and premature death.

18 State law prohibits the sale of tobacco products to persons under the age of 18. In spite of the
19 ban on sales to minors, and numerous other tobacco control policies implemented at the federal, state,
20 and local levels, 63% of smokers in California start smoking by age 18. National data show that 95%
21 of adult smokers begin smoking before they turn 21.

22 In San Francisco, almost 2.7% of middle school and 9.1% of high school students smoke. The
23 highest rate of smoking is among San Francisco's young adults (ages 18-24), 15.8% of whom smoke.

24 State law also bans the sale of electronic cigarettes to minors. In spite of this ban, preliminary
25 data of more than 430,000 middle and high school students from the California Healthy Kids Survey

1 found that in 2013, 6.3% of 7th graders, 12.4% of 9th graders, and 14.3% of 11th graders had used e-
2 cigarettes in the past 30 days. Among young adults (18 to 29 years old), e-cigarette use tripled in only
3 one year, from 2.3% to 7.6%.

4 A 2005 study based on data from the California Tobacco Survey, a large, population-based
5 telephone survey, found that 82% of adolescents who had ever smoked obtained their cigarettes from
6 others, mostly friends. A substantial percentage (40.9%) of the people giving the cigarettes were 18
7 years or older, with most of them (31.3%) being 18, 19, or 20. Adolescents who were 16 or 17 were
8 especially likely to get their cigarettes from persons aged 18 through 20.

9 In 2015, the Institute of Medicine, a division of the National Academies of Sciences,
10 Engineering, and Medicine, concluded that raising the minimum legal sales age for tobacco products
11 nationwide would reduce tobacco initiation, particularly among adolescents aged 15 through 17,
12 improve health across the lifespan, and save lives; and that raising the minimum legal sales age for
13 tobacco products nationwide to 21 would, over time, lead to a 12% decrease in the overall smoking
14 rate.

15 The Institute of Medicine also has predicted that raising the minimum legal sales age for
16 tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer
17 deaths from lung cancer, and 4.2 million fewer years of life lost for people born in the United States
18 between 2000 and 2019, and would result in near-immediate reductions in preterm births, low birth
19 weight babies, and sudden infant death syndrome.

20 Raising the minimum age to purchase tobacco products is likely to have a similar effect as has
21 raising the legal drinking age to 21, which has led to reduced alcohol use and dependence among
22 persons under 21. This Article 19P will likely result in less smoking and tobacco use among San
23 Franciscans under 18 and San Franciscans under 21, sparing people within both age groups from the
24 ravages that develop over time from harmful and highly addictive tobacco products.
25

1 **SEC. 19P.2. DEFINITIONS.**

2 For purposes of this Article 19P, the terms "Director," "Establishment," "Tobacco Product,"
3 and "Person" shall have the meanings set forth in Health Code Section 19H.2.

4
5 **SEC 19P.3. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS AGED**
6 **18, 19, OR 20 PROHIBITED.**

7 (a) The sale or distribution by an Establishment of any Tobacco Product to a Person aged
8 18, 19, or 20, is prohibited.

9 (b) The Director, or his or her designee, may enforce this Section 19P.3 pursuant to
10 Articles 19 et seq. of the Health Code, including but not limited to Article 19H.

11
12 **SEC. 19P.4. SIGNAGE.**

13 (a) Every Person to whom a permit shall have been granted pursuant to Health Code
14 Articles 19H or 19N shall post a sign or other notice in the Establishment, stating that in San Francisco
15 it is unlawful to sell Tobacco Products, including smokeless tobacco and electronic cigarettes, to
16 persons who are 18, 19, or 20 years of age. The sign or other notice shall be placed in a conspicuous
17 location in the Establishment, and the letters and numbers on the sign or notice shall be of sufficient
18 size that the message is readily visible to anyone within the Establishment who is considering buying a
19 Tobacco Product. Pursuant to Section 19P.5, the Director may adopt rules, regulations, or guidelines
20 regarding compliance with this Section 19P.4.

21 (b) The Director, or his or her designee, may enforce this Section 19P.4 pursuant to Articles
22 19 et seq. of the Health Code, including but not limited to Article 19H.

1 **SEC. 19P.5. ADMINISTRATIVE REGULATIONS.**

2 The Director may adopt rules, regulations, or guidelines for the implementation of this Article
3 19P.

4
5 **SEC 19P.6. NO CONFLICT WITH FEDERAL OR STATE LAW.**

6 Nothing in this Article 19.P shall be interpreted or applied so as to create any requirement,
7 power or duty that is preempted by federal or state law.

8
9 **SEC. 19P.7. SEVERABILITY.**

10 If any section, subsection, sentence, clause, phrase, or word of this Article 19P, or any
11 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court
12 of competent jurisdiction, such decision shall not affect the validity of the remaining portions or
13 applications of the Article. The Board of Supervisors hereby declares that it would have passed this
14 Article, and each section, subsection, sentence, clause, phrase, and word not declared invalid or
15 unconstitutional without regard to whether any other portion of this ordinance or application thereof
16 would be subsequently declared invalid or unconstitutional.

17
18 Section 3. Effective and Operative Dates.

19 (a) This ordinance shall become effective 30 days after enactment. Enactment
20 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
21 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
22 overrides the Mayor's veto of the ordinance.

23 (b) This ordinance shall become operative on July 1, 2016.

1 Section 4. Definition of "Tobacco Product." It is and has been the intent of the Board
2 of Supervisors that the definition of "Tobacco Product" in Health Code Section 19H.2, as
3 stated in Ordinance No. 59-15, be operative as of January 1, 2016, and that, as of that date,
4 that definition supersede any earlier definition of "Tobacco Product" or "Tobacco Products" in
5 Section 19H.2. Accordingly, as of January 1, 2016, "Tobacco Product" is and shall be defined
6 in Health Code Section 19H.2, in accordance with Ordinance No. 59-15, as follows:

7 "Tobacco Product" means (1) any product containing, made, or derived from tobacco or
8 nicotine that is intended for human consumption, whether smoked, heated, chewed,
9 absorbed, dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including,
10 but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis or snuff;
11 (2) any device or component, part, or accessory that delivers nicotine alone or combined with
12 other substances to the person using the device including but not limited to electronic
13 cigarettes, cigars, or pipes, whether or not the device or component is sold separately.

14 "Tobacco Product" does not include any product that has been approved by the United States
15 Food and Drug Administration for use as a tobacco cessation product where such product is
16 marketed and sold solely for such an approved purpose.

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

20 By: 
21 Anne Pearson
22 Deputy City Attorney

23
24
25
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LEGISLATIVE DIGEST

[Health Code - Banning the Sale of Tobacco Products to Persons Aged 18-20]

Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

Existing Law

Federal and state law prohibit the sale of tobacco products to persons who are under the age of 18. Similarly, state law prohibits the sale of electronic cigarettes to persons who are under the age of 18. In San Francisco, there is no current prohibition on the sale of tobacco products or electronic cigarettes to persons who are 18-, 19-, or 20-years old.

Amendments to Current Law

This ordinance amends the Health Code to prohibit licensed tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to 18-, 19- and 20-year olds. This ordinance also requires licensed tobacco retailers to post a sign indicating that it is unlawful in San Francisco to sell tobacco products and electronic cigarettes to persons who are 18, 19, or 20. Violation of the ordinance would be punishable by a suspension of the retailer's tobacco license or, in the case of a failure to post the required signage, an administrative penalty.

Background Information

Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year. It is known to cause cancer, heart disease, and respiratory diseases, among other health disorders. Each day, 700 children under the age of 18 become regular, daily smokers; and almost one-third will eventually die from smoking. If current trends continue, 5.6 million of today's youth will die prematurely from a smoking-related illness.

In addition to the adverse health impacts of tobacco use, the treatment of tobacco-related diseases adds tremendous costs, in the billions of dollars, to this country's health care system. A 2014 report by the University of California, San Francisco estimated that in 2009, the cost of smoking in San Francisco amounted to over \$380 million, including direct health care costs and indirect costs from lost productivity due to illness and premature death.

Although state law prohibits the sale of tobacco products to minors, 63% of smokers in California start smoking by age 18. National data show that 95% of adult smokers begin

smoking before they turn 21. In San Francisco, almost 2.7% of middle school and 9.1% of high school students smoke. The highest rate of smoking is among San Francisco's young adults (ages 18-24), 15.8% of whom smoke.

Likewise, in spite of the state ban on the sale of electronic cigarettes to minors, preliminary data of more than 430,000 middle and high school students from the California Healthy Kids Survey found that in 2013, 6.3% of 7th graders, 12.4% of 9th graders, and 14.3% of 11th graders had used electronic cigarettes in the past 30 days. Among young adults (18 to 29 years old), electronic cigarette use tripled in only one year, from 2.3% to 7.6%.

In 2015, the Institute of Medicine, a division of the National Academies of Sciences, Engineering, and Medicine, concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 through 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12% decrease in the overall smoking rate.

Since 2013, approximately ninety localities in eight states have adopted ordinances raising the minimum legal sales age for tobacco products to 21.

This ordinance will likely result in less smoking and tobacco use among San Franciscans under 18 and San Franciscans under 21, sparing people within both age groups from the ravages that develop over time from harmful and highly addictive tobacco products.

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Subject: Resolution No. 161-26A2

**In Support of Prohibiting the Sale of Tobacco Products/E-Cigarettes to Anyone
Under the Age of 21**

-Commissioners Shamann Walton, Matt Haney, Hydra Mendoza-McDonnell, Sandra Lee Fewer,
Emily M. Murase, Ph.D., Rachel Norton, Jill Wynns
and Student Delegates Teresia Chen and Miguel Tantiado

WHEREAS: Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year. It is known to cause cancer, heart disease, and respiratory diseases, among other health disorders; and

WHEREAS: Each day, 700 children under the age of 18 become regular, daily smokers; and almost one-third will eventually die from smoking. If current trends continue, 5.6 million of today's youth will die prematurely from a smoking-related illness; and

WHEREAS: According to a 2014 Report by the United States Surgeon General, cigarette smoking today is even more dangerous than previously thought. Cigarette smoking has been linked to disease of nearly all organs of the body; and

WHEREAS: The adverse health effects of tobacco use are not limited to smoking. The National Cancer Institute and the International Agency for Research on Cancer report that use of smokeless tobacco causes oral, pancreatic, and esophageal cancer; and may also cause heart disease, gum disease, and oral lesions other than cancer, such as leukoplakia (precancerous white patches in the mouth); and

WHEREAS: Further, electronic cigarettes (also known as e-cigarettes) also present significant health risks. E-cigarettes contain nicotine, a highly addictive neurotoxin. Exposure to nicotine during adolescence can harm brain development and predispose youth to future tobacco use. In addition, electronic cigarette aerosol has been found to contain at least ten chemicals that are on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm; and

WHEREAS: In addition to the adverse health impacts of tobacco use, the treatment of tobacco-related diseases adds tremendous costs, in the billions of dollars, to this country's health care system. A 2014 report by the University of California, San Francisco estimated that in 2009, the cost of smoking in San Francisco amounted to over \$380 million, including direct health care costs and indirect costs from lost productivity due to illness and premature death; and

WHEREAS: State law prohibits the sale of tobacco products to persons under the age of 18. In spite of the ban on sales to minors, and numerous other tobacco control policies implemented at the federal, state, and local levels, 63% of smokers in California start smoking by age 18. National data show that 95% of adult smokers begin smoking before they turn 21; and

Subject: Resolution No. 161-26A2

In Support of Prohibiting the Sale of Tobacco Products/E-Cigarettes to Anyone Under the Age of 21 -

Commissioners Shamann Walton, Matt Haney, Hydra Mendoza-McDonnell, Sandra Lee Fewer, Emily M. Murase, Rachel Norton, Jill Wynns and Student Delegates Teresia Chen and Miguel Tantiado

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WHEREAS: In San Francisco, almost 2% of middle school students and 4% of high school students smoke (*California Healthy Kids Survey 2014*) and 8% of middle school students and 13% of high school students use e-cigarettes (*Youth Risk Behavior Survey 2015*). The highest rate of smoking is among San Francisco's young adults (ages 18-24), 15.8% of whom smoke. State law also bans the sale of electronic cigarettes to minors. In spite of this ban, preliminary data of more than 430,000 middle and high school students from the California Healthy Kids Survey found that in 2014, the California Healthy Kids Survey found that 5% of 7th graders, 7% of 9th graders and 6% of 11th graders had used e-cigarettes in the past 30 days. Among young adults (18 to 29 years old), e-cigarette use tripled in only one year, from 2.3% to 7.6%; and

WHEREAS: 2005 study based on data from the California Tobacco Survey, a large, population-based telephone survey, found that 82% of adolescents who had ever smoked obtained their cigarettes from others, mostly friends. A substantial percentage (40.9%) of the people giving the cigarettes were 18 years or older, with most of them (31.3%) being 18, 19, or 20. Adolescents who were 16 or 17 were especially likely to get their cigarettes from persons aged 18 through 20; and

WHEREAS: In 2015, the Institute of Medicine, a division of the National Academies of Sciences, Engineering, and Medicine, concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 through 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12% decrease in the overall smoking rate; and

WHEREAS: The Institute of Medicine also has predicted that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for people born in the United States between 2000 and 2019, and would result in near-immediate reductions in preterm births, low birth weight babies, and sudden infant death syndrome; and

WHEREAS: Raising the minimum age to purchase tobacco products is likely to have a similar effect as has raising the legal drinking age to 21, which has led to reduced alcohol use and dependence among persons under 21. Raising the minimum age to purchase tobacco to 21 will likely result in less smoking and tobacco use among San Franciscans under 18 and San Franciscans under 21, sparing people within both age groups from the ravages that develop over time from harmful and highly addictive tobacco products; and

WHEREAS: The Board of Education of the SFUSD in May 2014, adopted *Superintendent's Proposal 44-22Sp1 which amended the current District policy use of tobacco, alcohol, and other drugs to further prohibit the use of products containing nicotine, such as electronic cigarettes and all vapor emitting electronic devices with or without nicotine content, including electronic hookah, that mimic the use of tobacco products.

Subject: Resolution No. 161-26A2

In Support of Prohibiting the Sale of Tobacco Products/E-Cigarettes to Anyone Under the Age of 21 -
Commissioners Shamann Walton, Matt Haney, Hydra Mendoza-McDonnell, Sandra Lee Fewer, Emily M. Murase,
Rachel Norton, Jill Wynns and Student Delegates Teresia Chen and Miguel Tantiado

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THEREFORE BE IT RESOLVED: That the San Francisco Unified School District (SFUSD) supports the proposed legislation (Ordinance #: 151179) from Supervisors Scott Wiener, Malia Cohen, Eric Mar and Mark Farrell, which states that the sale or distribution by an Establishment of any tobacco product to a Person aged 18, 19, or 20, is prohibited; and

FURTHER BE IT RESOLVED: That the SFUSD supports the assurance that every person who has been granted a permit to sell tobacco pursuant to Health Code Articles 19H or 19N shall post a sign or other notice in their Establishment, stating that in San Francisco it is unlawful to sell Tobacco Products, including smokeless tobacco and electronic cigarettes, to persons who are 18, 19, or 20 years of age. SFUSD also supports that signs or other notices be placed in a conspicuous location in the establishments that sell these products, and the letters and numbers on the sign or notice shall be of sufficient size that the message is readily visible to anyone within the establishment who is considering buying a Tobacco Product; and

FURTHER BE IT RESOLVED: That SFUSD understands and supports the mandate pursuant to Section 19P.5 that the Director of Public Health may adopt rules, regulations, or guidelines regarding compliance with this Section 19P.4. (b) The Director of Public Health, or his or her designee, may enforce this Section 19P.4 pursuant to Articles 19 et seq. of the Health Code, including but not limited to Article 19H; and

FURTHER BE IT RESOLVED: That the SFUSD will support the components of the proposed legislation (Ordinance Number #151179) through providing information to students—along with the San Francisco Department of Public Health—about the dangers of the usage of tobacco products and e-cigarettes, which provide a gateway to tobacco usage.

*Superintendent's Proposal 144-22Sp1 – Recommendation for Amending Board of Education Policy on the use of Tobacco, Alcohol, and Other Drugs to Update its Current Version to Include Change and Include Additional Language.

1/26/16



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



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

January 26, 2016

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

BOS File No. 151179 [Health Code - Banning the Sale of Tobacco Products to Persons Aged 18-20] Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo,

On January 11, 2016, the Small Business Commission voted unanimously to recommend that the Board of Supervisors approve BOS File No. 151179.

The Small Business Commission supports amending the legal age from 18 to 21 to purchase tobacco products as a health policy objective that is benefits all in improving the quality of life for San Franciscans. The change in the age limit will make it bit easier for businesses to identify Californians eligible to purchase tobacco products as California legal ID's are significantly different for individuals over or under 21. It must be understood that this is not the case for all state issued ID's in the U.S.

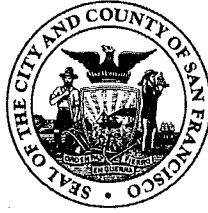
The Small Business Commission appreciates the Department of Public Health's commitment made at the meeting, to allow for a 12 month period of outreach and education before any violations and penalties are applied.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Andrea Ausberry, Land Use and Transportation Committee
Scott Wiener, Board of Supervisor
Nicole Elliott, Mayor's Office

Youth Commission
City Hall ~ Room 345
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532



(415) 554-6446
(415) 554-6140 FAX
www.sfgov.org/youth_commission

YOUTH COMMISSION
MEMORANDUM

TO: Alisa Somera and Erica Major, Clerks, Land Use & Transportation Committee
FROM: Youth Commission
DATE: Thursday, February 4, 2016
RE: Referral response to BOS File No. 151179

At our **Monday, February 1, 2016 meeting**, the Youth Commission voted to unanimously support the following motion:

To support BOS File No. 151179—Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

During discussion on this item, youth commissioners voted to submit the following comments regarding this legislation:

The Youth Commission recommends that the Board of Supervisors consider opportunities for creating a youth outreach effort to inform youth people about the ordinance.

The Youth Commission recommends that the City make efforts to advise 18-20 year olds of their rights and responsibilities under the ordinance and to clarify for young people that the new ordinance does not criminalize tobacco use or possession for 18-20 year olds.

Youth Commissioners thank the Board of Supervisors for their attention to issue. If you have any questions, please contact our office at (415) 554-6446, or your Youth Commissioner.

A handwritten signature in cursive script, reading "Luis Avalos-Nunez".

Chair, Luis Avalos-Nunez
Adopted on February 1, 2016
2015-2016 San Francisco Youth Commission

**HEALTH COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
DRAFT Resolution No. 16-2**

RESOLUTION APPROVING SUPPORT FOR THE CITY AND COUNTY OF SAN FRANCISCO TO AMEND THE HEALTH CODE TO PROHIBIT RETAILERS FROM SELLING TOBACCO PRODUCTS, INCLUDING SMOKELESS TOBACCO AND ELECTRONIC CIGARETTES, TO PERSONS AGED 18, 19, OR 20

WHEREAS, Tobacco is the number one preventable cause of death; and

WHEREAS, Tobacco claims nearly half a million lives a year in the United States; and

WHEREAS, Cigarette smoking increases the risk of heart disease, chronic obstructive pulmonary disease, acute respiratory illness, stroke; and cancers of the lung, larynx, oral cavity, pharynx, pancreas, breast and cervix; and

WHEREAS, Electronic cigarettes also present significant health risk since they can contain nicotine, a highly addictive neurotoxin. Exposure to nicotine during adolescence can harm the brain development and predispose youth to future tobacco use; and

WHEREAS, The prevalence of cigarette smoking among adults in San Francisco has decreased over the past 17 years, however, it has remained relatively stable at 12-14% since 2008; and

WHEREAS, From 2007 to 2012, smoking before and during pregnancy has decreased among women in San Francisco. However, the prevalence of smoking three months prior to becoming pregnant is higher among Black/African American women (12.3%); and

WHEREAS, Youth are disproportionately affected by tobacco use, with almost 3% of San Francisco middle school and 9.1% of high school students reporting that they smoke; and

WHEREAS, Rates continue to increase with age peaking at 16% among young adults 18-24 years old; and

WHEREAS, A 2005 study based from the California Tobacco Survey found that 82% of adolescents who had ever smoked obtained their cigarettes from others, mostly friends, and a substantial percentage (40.9%) of the people giving cigarettes were 18 years or older, with most of them (31.3%) being ages 18, 19, or 20; and

WHEREAS, In 2015, the Institute of Medicine (IOM) concluded that raising the minimum legal age to 21 for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15-17, and over time would lead to a 12% decrease in the overall smoking rate; and

WHEREAS, The IOM also predicted that raising the minimum legal age would result in 223,000 fewer premature deaths, 50,000 fewer death from lung cancer, and 4.2 million fewer years lost for people born in the US between 2000 and 2019, and would result in near-immediate reductions in preterm births, low birth weight babies, and sudden infant death syndrome; and

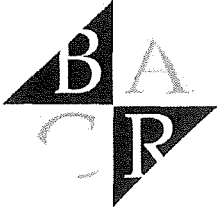
WHEREAS, New York City, the State of Hawaii, Kansas City- Missouri, Santa Clara County and a total of 188 jurisdictions across the nation have adopted a tobacco purchase age of 21 with more considering the proposal each week;

NOW, THEREFORE, BE IT RESOLVED, That the San Francisco Health Commission approves and supports the efforts of the City and County of San Francisco to amend the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

I hereby certify that the San Francisco Health Commission at its meeting on February 2, 2016 adopted the foregoing resolution.



Mark Morewitz
Executive Secretary to the Health Commission



Bay Area
Community
Resources

January 25, 2016

Dear Supervisor Wiener:

I am writing on behalf of the San Francisco Tobacco Free Coalition in support of San Francisco Health Code Article 19P, the proposed ordinance to raise the minimum age to purchase tobacco products to 21 years old in San Francisco.

BACR reaches over 25,000 youth each year in a variety of school-based programs throughout the Bay Area. We are acutely aware of the health effects of smoking and second-hand smoke and strongly support any effort to prevent or delay the onset of smoking. Smokers who start at a younger age tend to be heavier and long term smokers, which leads to higher risk of tobacco-related health problems such as cancer and heart disease. Youth who smoke are also at risk for increased blood pressure, asthma, and reduced lung growth. And, exposure to and use of nicotine before 25 years of age has long-lasting negative impacts on adolescent brain development.

The proposed ordinance would have a significant impact on the health of this generation of youth. Research shows that initiation of tobacco use mainly begins before age 18; therefore, raising the minimum age would protect youth from becoming smokers in the first place, preventing a lifetime of negative health and cognitive effects. Many other studies have been made showing that raising the minimum age of purchase to 21 could result in a 25% decrease in smoking initiation rate for 15-17 year olds and prevent 223,000 premature deaths nationally. Our own UCSF estimated that the cost of smoking in San Francisco amounted to over \$380 million per year, including direct health care costs and indirect costs from lost productivity due to illness and premature death.

This ordinance would add to San Francisco's history of advanced tobacco policies which protect our youth from a lifetime of addiction, poor health, and possibly death. For these reasons, BACR supports the proposed ordinance.

Sincerely,

Mary Jo Williams, Chief Operating Officer

Administrative Office

171 Carlos Drive
San Rafael
California 94903-2005

Phone
415.444.5580
Fax
415.444.5598
Website
www.bacr.org

Martin Weinstein
CEO

Mary Jo Williams
COO

Board of Directors

Lissa Franklin
President

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Bryan Breckenridge
Robert Davisson
Christina Lee
David Lillienstein
Rob Ness
Bud Travers
Monica Vaughan
Shannon Vincent

Major, Erica (BOS)

From: Board of Supervisors, (BOS)
Sent: Tuesday, November 24, 2015 10:09 AM
To: Calvillo, Angela (BOS); Major, Erica (BOS)
Subject: FW: 151179 NATO: Age 21 Ordinance
Attachments: Letter to San Francisco Board of Supervisors Regarding State Law Pre-Emption.pdf; ATT00001.htm; Healdsburg Police Department Letter to Tobacco Retailers.pdf; ATT00002.htm

From: Thomas Briant [mailto:info@natocentral.org]
Sent: Tuesday, November 24, 2015 6:46 AM
To: Mar, Eric (BOS) <eric.mar@sfgov.org>; Farrell, Mark (BOS) <mark.farrell@sfgov.org>; julie.chirstensen@sfgov.org; Tang, Katy (BOS) <katy.tang@sfgov.org>; BreedStaff, (BOS) <breedstaff@sfgov.org>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Wiener, Scott <scott.wiener@sfgov.org>; david.campos@sfgvo.org; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>
Cc: info@sfcityattorney.org; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: NATO: Age 21 Ordinance

NATO®

DATE: November 24, 2015

TO: San Francisco Board of Supervisors

CC: City Attorney Dennis Herrera; Clerk of the Board of Supervisors

FROM: Thomas Briant, Executive Director and Legal Counsel

As the legal counsel for the National Association of Tobacco Outlets and on behalf of the retailers located in San Francisco that are members of NATO, I am submitting the attached letter which explains that California state law preempts a local unit of government from enacting an ordinance that raises the legal age to purchase tobacco products beyond age 18 as proscribed by California Penal Code Section 308. Please review the letter and I would appreciate a reply to this request by City Attorney Dennis Herrera.

If you or the city attorney has any questions, please call me at 866-869-8888.



NATO

November 23, 2015

President London Breed
Supervisor Eric Mar
Supervisor Mark Farrell
Supervisor Julie Christensen
Supervisor Katy Tang
Supervisor Jane Kim
Supervisor Norman Yee
Supervisor Scott Wiener
Supervisor David Campos
Supervisor Malia Cohen
Supervisor John Avalos
City of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: State Law Pre-Emption of Raising the Legal Age to Purchase Tobacco Products

Dear President Breed and Supervisors:

As legal counsel for the National Association of Tobacco Outlets, Inc. (NATO), and on behalf of NATO's retail member stores located in Palo Alto, I am writing to explain that California state law pre-empts a local government from raising the legal age to purchase tobacco products. Recently, newspaper reports have indicated that an ordinance has been proposed to raise the legal age to purchase tobacco products to 21 in the City of San Francisco.

California Penal Code Section Pre-Empts Local Governments from Raising the Legal Age

California Penal Code Section 308(a)(1) makes it illegal to sell tobacco products to a person under the age of 18. Specifically, the statute reads as follows:

Section 308(a)(1): Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or blunts wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products

prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Moreover, California Penal Code Section 308(e) clearly states that this state law pre-empts a local unit of government from enacting a law contrary to this state statute. This section reads as follows:

Section 308(e): It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

By enacting California Penal Code Section 308, the California legislature intended to exclusively regulate the issue of the minimum age to purchase tobacco products and, as a result, a city or county are not allowed to adopt any ordinance or regulation inconsistent with the minimum legal age of 18 years old.

In *Prime Gas, Inc. v. City of Sacramento*, (2010) 184 Cal. App. 4th 697, 109 Cal.Rptr.3d 261, the plaintiff raised the issue of preemption. The Court, citing *O'Connell v. City of Stockton* 41 Cal.4th 1061, 63 Cal.Rptr.3d 67, 162 P.3d 583 (2007), noted that the legislature may either expressly or implicitly preempt local jurisdictions, and further noted that Penal Code section 308(e) expressly prohibits cities and counties from adopting any ordinance or regulation inconsistent with Penal Code Section 308. (See 184 Cal. App.4th 703; 109 Cal.Rptr. 3d 264). Since Penal Code Section 308 That section makes it a crime to sell to a person under 18.

The court noted that in *Bravo Vending v. City of Rancho Mirage* 16 Cal.App.4th 383, 20 Cal.Rptr.2d 164 (1993), it was:

concluded that "the regulatory field preempted by [Penal Code] section 308 is that of the penal—i.e., both criminally and civilly proscribed—aspects of the sale of cigarettes to minors: To whom is it illegal to sell cigarettes, and what are the penal consequences of doing so?" (*Bravo*, supra, at p. 403, 20 Cal.Rptr.2d 164.)

184 Cal.App. 4th 706; 109 Cal.Rptr. 3d 266.

Thus the *Prime Gas* court affirmed the *Bravo* court's conclusion that Penal Code section 308 decided the issue of "to whom is it illegal to sell cigarettes," that is, persons under the age of 18.

The *Prime Gas* court went on to expound upon two other later enactments, the STAKE Act, which permits local jurisdictions to be "enforcing agencies" of State law, and the State Licensing Act of 2003. This latter Act the court described as playing "the pivotal role in deciding whether the [Sacramento] Ordinance is preempted by state law." 184 Cal.App. 4th 708; 109 Cal.Rptr. 3d 268. The Licensing Act allowed Boards of Equalization to impose administrative penalties for violations of either Penal Code Section 308 or the Stake Act. Then the Court quoted what it

called “the clincher” as to whether Sacramento’s ordinance, Bus & Prof. Code § 22971.3, was preempted:

Nothing in this [Act] preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law. (Italics in original.)

184 Cal.App. 4th 709; 109 Cal.Rptr. 3d 269.

Thus, the *Prime Gas* court decided that Sacramento could adopt a local license law that included suspension or revocation of the local license *for violations of a state tobacco control law* because the License Act of 2003 specifically said they could. In other words, the State expressly allows local jurisdictions to adopt their own ordinances as long as they are restricted to suspension or revocation for violations of State tobacco laws.

Healdsburg Suspension of Enforcement of Age 21 Ordinance

Please note that the Healdsburg, California City Council has suspended its enforcement of the city’s minimum age 21 requirements to purchase tobacco products after NATO informed the city council members that California state law pre-empts a local unit of government from increasing the legal age to buy tobacco products. For your reference, I have included links to a Santa Clara Press Democrat newspaper story about the decision to suspend enforcement and a follow up editorial that was printed in the newspaper.

Healdsburg City Attorney Robin Donoghue (707-573-7803) has also informed me that the city will be submitting a request to the California Attorney General for an attorney general’s opinion regarding the state law pre-emption of raising the legal age to purchase tobacco products. In addition, the Healdsburg City Police Department has sent the accompanying letter dated October 12, 2015 to Healdsburg retailers informing them that enforcement of the age 21 requirements is suspended and that retailers can once again sell tobacco products to 18, 19, and 20-year-old adults during this enforcement suspension period.

Other California Local Governments Recognize State Law Pre-Empts Higher Legal Age

Just last month, the Los Angeles Chief Legislative Analyst informed the Los Angeles City Council that a city council member’s pending request to draft an ordinance increasing the legal age to purchase tobacco products to age 21 could not be complied with because California state law pre-empts such a local law from being adopted by a city or county government. According to the attached Los Angeles “Report of the Chief Legislative Analyst” dated September 11, 2015, Page 2, the Chief Legislative Analyst states as follows:

“On August 21, 2013, Motion (Koretz-Bonin) was introduced which requests the City Attorney to prepare an ordinance to increase the minimum legal age to purchase tobacco products from age 18 to 21 (C.F. 13-1101). The City Attorney has advised that the City is not allowed to increase the minimum legal age to purchase these products inasmuch as it is

preempted by State law.”

In addition to the Los Angeles City Attorney’s determination that state law pre-empts a local government from raising the legal age to purchase tobacco products, the El Cerrito, California City Attorney came to the same conclusion. As evidenced by Item 7A of the El Cerrito City Council Meeting agenda for January 20, 2015, which can be found at the link below, the following paragraph references the El Cerrito City Attorney’s opinion:

Minimum Legal Sale Age (MLSA)

The federal nationwide minimum age to purchase cigarette and smokeless tobacco is 18 years of age. In researching the matter, the City Attorney’s office found that cities in California are preempted under State law (Penal Code section 308) from raising the MLSA. California cities may regulate some details about the manner of the sales, and revoke a license if the business sells to a minor, but California cities cannot raise the MLSA.

<http://www.el-cerrito.org/Archive.aspx?ADID=2093>

In short, other local California lawmakers have been advised by their respective legal counsels that a local government is prohibited from raising the legal age to purchase tobacco products. Based on this legal advice, these cities have not considered nor adopted a minimum legal age of 21 to purchase tobacco products.

For all of the reasons stated above, I am requesting that the San Francisco Board of Supervisors cease future consideration of an ordinance to raise the legal age to purchase tobacco products to 21 years old.

I would appreciate the courtesy of a reply to this correspondence to be informed of what action the San Francisco Board of Supervisors will take on this matter. Thank you for your consideration.

Sincerely,

Thomas A. Briant

Executive Director and Legal Counsel
National Association of Tobacco Outlets, Inc.

Copy To: City Attorney Dennis Herrera
Clerk of the Board of Supervisors



CITY OF HEALDSBURG
Police Department
238 Center Street
Healdsburg, CA 95448
Phone: 707/431-3377
visit us at www.ci.healdsburg.ca.us

TOBACCO RETAILER INFORMATION

October 12, 2015

Tobacco Retailer

RE: Healdsburg Municipal Code:

8.26.020 (E) It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, give, or in any way furnish to another person who is under the age of 21 years any tobacco product or smoking paraphernalia.

Dear Business Owner:

Effective immediately, and until further notice from the City of Healdsburg, the above portion of the City's Tobacco Ordinance, which only allows for the sale of tobacco products to persons who are at least 21 one years of age, is temporarily suspended. Accordingly, validly licensed tobacco retailers may sell tobacco products to persons who are at least 18 years of age, as required by California law. All other portions of the City's Tobacco Ordinance will remain in full effect.

Please contact me if you have any questions.

Sincerely,

Mike Miller

Code Enforcement Officer
Healdsburg Police Department
238 Center Street
Healdsburg, CA 95448
mmiller@ci.healdsburg.ca.us
707-431-3162

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Barbara A. Garcia, Director, Department of Public Health
Regina Dick-Endrizzi, Director, Office of Small Business Commission

FROM: Erica Major, Assistant Committee Clerk, Public Safety and Neighborhood
Services Committee, Board of Supervisors

DATE: November 24, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Wiener on November 17, 2015:

File No. 151179

Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Youth Commission

FROM: Erica Major, Assistant Committee Clerk, Public Safety and Neighborhood Services Committee

DATE: November 24, 2015

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following, which at the request of the Youth Commission is being referred as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 151179

Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

Please return this cover sheet with the Commission's response to **Erica Major, Assistant Committee Clerk, Public Safety and Neighborhood Services Committee.**

RESPONSE FROM YOUTH COMMISSION Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Youth Commission

President, District 5
BOARD of SUPERVISORS



BOS-11, COB, PSNS, LVI
Leg Dep, Dep city atty,
City Hall Mayor's office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7630
Fax No. 554-7634
TDD/TTY No. 544-5227

London Breed

PRESIDENTIAL ACTION

Date: February 4th, 2016
To: Angela Calvillo, Clerk of the Board of Supervisors

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 FEB -4 PM 12:26
AK

Madam Clerk,
Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____
(Primary Sponsor)

Title. _____

Transferring (Board Rule No 3.3)

File No. 151179 Wiener
(Primary Sponsor)

Title. Health Code - Banning the Sale of Tobacco Products to Persons Aged 18-20 **+**

From: Public Safety & Neighborhood Services Committee

To: Land Use & Transportation Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)

London Breed, President
Board of Supervisors

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

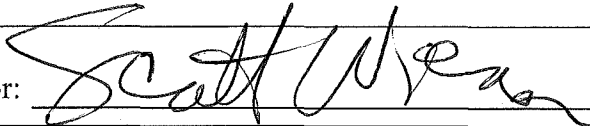
Supervisors Wiener; Mar ~~W~~ Cohen + Farrell

Subject:

Health Code - Banning the Sale of Tobacco Products to 18-, 19-, and 20-Year-Olds

The text is listed below or attached:

Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: