

BOARD of SUPERVISORS



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MEMORANDUM

TO: Dr. Grant Colfax, Director, Department of Public Health
David Serrano Sewell, Executive Director, Office of the Chief Medical Examiner
Anne Pearson, Office of the City Attorney

FROM: John Carroll, Assistant Clerk, Public Safety and Neighborhood Services Committee, Board of Supervisors

DATE: July 3, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Dorsey on June 27, 2023:

File No. 230766

Ordinance amending the Health Code to require each retail pharmacy in the City to stock at least two boxes of an opioid antagonist, such as naloxone, used to reverse opioid overdoses.

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.

CC:
Offices of Chair Stefani and Supervisor Dorsey
Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Ana Validzic, Department of Public Health
Dr. Christopher Liverman, Office of the Chief Medical Examiner
Dr. Ellen Moffat, Office of the Chief Medical Examiner

1 [Health Code - Requiring Retail Pharmacies to Stock Opioid Antagonists]

2
3 **Ordinance amending the Health Code to require each retail pharmacy in the City to**
4 **stock at least two boxes of an opioid antagonist, such as naloxone, used to reverse**
5 **opioid overdoses.**

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 *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough 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 Article 48, consisting of
15 Sections 4801 through 4808, to read as follows:

16 **ARTICLE 48:**

17 **REQUIRING RETAIL PHARMACIES TO STOCK OPIOID ANTAGONISTS.**

18 **SEC. 4801. FINDINGS.**

19 (a) According to the U.S. Centers for Disease Control and Prevention, overdose deaths remain
20 a leading cause of injury-related deaths in the United States, and the majority of overdose deaths
21 involve opioids. From 2000 to 2015, more than half a million people died from drug overdoses across
22 the United States. In 2021, more than 71,000 people died from synthetic opioid-related drug overdoses
23 in the United States. On October 26, 2017, the Acting Secretary of the U.S. Department of Health and
24 Human Services declared the opioid crisis a national public health emergency and has renewed such
25 declaration every 90 days since 2017.

1 (b) According to the California Department of Public Health, based on preliminary data, there
2 were 6,843 opioid-related overdose deaths in California in 2021; 5,722 of these deaths were related to
3 fentanyl, and 224 of the fentanyl-related overdose deaths were teens, ages 15–19 years old.

4 (c) According to the San Francisco Office of the Chief Medical Examiner, there were 647
5 accidental drug overdose deaths in San Francisco in 2022, and over 70% of those deaths were
6 attributable to fentanyl. Between January and May 2023, preliminary reports indicate there were 346
7 overdose deaths in San Francisco, a more than 40% increase from the same period in 2022, with more
8 than 79% of those deaths attributable to fentanyl.

9 (d) Naloxone and other opioid antagonists are life-saving medications that are used to reverse
10 a drug overdose. They are safe to use, work almost immediately, and are not addictive. According to
11 peer-reviewed articles published in the journals “Drug and Alcohol Dependence” and “JAMA Internal
12 Medicine,” state laws allowing pharmacist dispensing of naloxone have been associated with a 53%
13 increase in naloxone dispensing, and a significant reduction in overdose deaths. The California Public
14 Health Officer has issued a standing order to allow pharmacies, community organizations, and other
15 approved entities to distribute prescription naloxone and allow for the administration of prescription
16 naloxone by a family member, friend, or other person, to a person experiencing an overdose.

17 (e) On March 29, 2023, the U.S. Food and Drug Administration announced that it approved
18 NARCAN®, a four milligram (mg) naloxone hydrochloride nasal spray, for over-the-counter,
19 nonprescription use. It is the first naloxone product approved for use without a prescription.

20 (f) Despite the efficacy of naloxone and other opioid antagonists, and the fact that pharmacy
21 distribution of naloxone is the second-most effective way—after community distribution—to provide
22 naloxone to people most likely to use it and reverse an overdose, naloxone remains largely
23 inaccessible.

24 (g) The Board of Supervisors hereby finds that the public interest is served by ensuring that
25 retail pharmacies in San Francisco stock a minimum number of opioid antagonists for purchase.

1
2 **SEC. 4802. DEFINITIONS.**

3 *For purpose of this Article 48, the following terms have the following meanings:*

4 *“City” means the City and County of San Francisco.*

5 *“Department” means the San Francisco Department of Public Health.*

6 *“Director” means the Director of the San Francisco Department of Public Health or the*
7 *Director’s designee.*

8 *“FDA” means the United States Food and Drug Administration.*

9 *“Opioid Antagonist” means Naloxone nasal spray (NARCAN®) or any other formulation of*
10 *naloxone hydrochloride or similar drug approved or authorized by the FDA for the treatment of an*
11 *opioid overdose.*

12 *“Pharmacist” means an individual licensed by the California State Board of Pharmacy to*
13 *engage in the practice of pharmacy.*

14 *“Retail Pharmacy” means a licensed pharmacy, as defined in subdivision (a) of Section 4037 of*
15 *the California Business and Professions Code, that is located in the City and dispenses drugs for retail*
16 *sale.*

17
18 **SEC. 4803. OPIOID ANTAGONIST STOCKING REQUIREMENT.**

19 *(a) Each Retail Pharmacy shall maintain a pharmaceutical stock of Opioid Antagonists*
20 *sufficient to fill at least two purchases of Opioid Antagonists by consumers.*

21 *(b) The following shall constitute a sufficient stock of Opioid Antagonist for purposes of this*
22 *Section 4803: (1) two boxes of nonprescription Opioid Antagonist; (2) two boxes of prescription Opioid*
23 *Antagonist; or (3) one box of prescription Opioid Antagonist and one box of nonprescription Opioid*
24 *Antagonist.*

1 (c) It shall be an affirmative defense to a violation of subsection (a) of this Section 4803 for a
2 Retail Pharmacy to demonstrate by a preponderance of the evidence that:

3 (1) No more than three days had elapsed since the Retail Pharmacy maintained a
4 pharmaceutical stock of Opioid Antagonists sufficient to fill at least two requests for Opioid
5 Antagonists; and

6 (2) During that three-day grace period, the Retail Pharmacy had ordered
7 replacement stock and was waiting for the supplier to fill the order.

8 (d) Retail Pharmacies shall post clear and legible signage advising customers of the
9 availability of Opioid Antagonists at the following locations:

10 (1) At all points of sale at which a Pharmacist dispenses pharmaceuticals; and

11 (2) If the Retail Pharmacy stocks nonprescription, over-the-counter Opioid
12 Antagonists, at all points of sale where the Retail Pharmacy sells nonprescription medication.

13 (e) The Department may develop model signage for use by Retail Pharmacies.

14
15 **SEC. 4804. ADMINISTRATION AND ENFORCEMENT.**

16 (a) This Article 48 shall be administered and enforced by the Department. The Director may
17 adopt regulations, guidelines, and forms to carry out the provisions and purposes of this Article 48.

18 (b) For purposes of assessing penalties for violation of this Article 48, each of the following
19 shall constitute a separate violation: (1) each day in which a Retail Pharmacy fails to maintain a
20 sufficient stock of Opioid Antagonists as required under section 4803(a), subject to the affirmative
21 defense set forth in Section 4803(c); and (2) each day in which a Retail Pharmacy fails to display the
22 signage required under Section 4803(d).

23 (c) The Director shall issue a notice of violation for violations of subsections (a) and (d) of
24 Section 4803. The Director may impose an administrative penalty of not less than \$250 and not more
25 than \$1,000 per violation. Administrative Code Chapter 100, "Procedures Governing the Imposition

1 of Administrative Fines,” is hereby incorporated in its entirety, except as it relates to the definition of a
2 violation and the calculation of penalty amounts, addressed in Sections 4804(b) and (c), and that the
3 Director shall appoint the hearing officer to conduct hearings for appeals.

4
5 **SEC. 4805. ENFORCEMENT BY CITY ATTORNEY.**

6 (a) The City Attorney may at any time institute civil proceedings for injunctive and monetary
7 relief, including civil penalties, against any person for violations of this Article 48, without regard to
8 whether the Director has issued a notice of violation, instituted abatement proceedings, scheduled or
9 held a hearing on a notice of violation, or issued a final decision.

10 (b) At any time, the Director may refer a case to the City Attorney’s Office for civil
11 enforcement, but a referral is not required for the City Attorney to bring a civil action under this
12 Section 4805.

13 (c) Any person that violates any provision of this Article 48 shall be enjoined and shall be
14 subject to a civil penalty of not less than \$250 and not more than \$1,000 for each violation, as defined
15 in Section 4804(b), which penalty shall be assessed and recovered in a civil action brought in the name
16 of the people of the City and County of San Francisco by the City Attorney in any court of competent
17 jurisdiction. In assessing the amount of the civil penalty, the court shall consider any one or more of
18 the relevant circumstances presented by any of the parties to the case, including but not limited to, the
19 following: the nature and seriousness of the misconduct giving rise to the violation, the number of
20 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
21 the willfulness of the defendant’s misconduct, and the defendant’s assets, liabilities and net worth.

22 (d) The prevailing party in any court case or special proceeding to enforce this Article 48 shall
23 recover reasonable attorneys’ fees if the City Attorney elects, at the initiation of the action, to seek
24 recovery of attorneys’ fees and provides notice of such intention to the adverse party or parties. In no

1 court case or special proceeding shall an award of attorneys' fees to a prevailing party exceed the
2 amount of reasonable attorneys' fees incurred by the City.

3 (e) Remedies under this Section 4805 are non-exclusive and cumulative to all other remedies
4 available at law or equity.

5
6 **SEC. 4806. UNDERTAKING FOR THE GENERAL WELFARE.**

7 In enacting and implementing Article 48, the City is assuming an undertaking only to promote
8 the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation
9 for breach of which it is liable in money damages to any person who claims that such breach
10 proximately caused injury.

11
12 **SEC. 4807. SEVERABILITY.**

13 If any section, subsection, sentence, clause, phrase, or word of Article 48, or any application
14 thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court
15 of competent jurisdiction, such decision shall not affect the validity of the remaining portions or
16 applications of this Article. The Board of Supervisors hereby declares that it would have passed this
17 Article and each and every section, subsection, sentence, clause, phrase, and word not declared invalid
18 or unconstitutional without regard to whether any other portion of these sections or application thereof
19 would be subsequently declared invalid or unconstitutional.

20
21 **SEC. 4808. NO CONFLICT WITH FEDERAL OR STATE LAW.**

22 Nothing in this ordinance shall be interpreted or applied so as to create any requirement,
23 power, or duty in conflict with any federal or state law.

LEGISLATIVE DIGEST

[Health Code - Requiring Retail Pharmacies to Stock Opioid Antagonists]

Ordinance amending the Health Code to require each retail pharmacy in the City to stock at least two boxes of an opioid antagonist, such as naloxone, used to reverse opioid overdoses.

Amendments to Current Law

The Proposed Ordinance would create a new article in the Health Code requiring each retail pharmacy in the City to stock sufficient opioid antagonists, such as naloxone, to fulfill at least two purchases, which would typically be two boxes, of such opioid antagonists by consumers. The Proposed Ordinance would also allow a 3-day grace period for retail pharmacies to reorder two boxes. Finally, the Proposed Ordinance would provide for penalties for violations of not less than \$250 per violation and not more than \$1,000 per violation.

Background Information

According to the U.S. Centers for Disease Control and Prevention, overdose deaths remain a leading cause of injury-related deaths in the United States, and the majority of overdose deaths involve opioids. Naloxone and other opioid antagonists are life-saving medications that are used to reverse a drug overdose. The availability and distribution of naloxone at pharmacies is one of the most effective ways to provide naloxone to people most likely to use it and reverse an overdose. But, naloxone at pharmacies remains largely inaccessible.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: