

BOARD of SUPERVISORS



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MEMORANDUM

TO: Alondra Esquivel-Garcia, Director, Youth Commission

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

DATE: January 30, 2023

SUBJECT: LEGISLATIVE MATTER INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following hearing request, introduced by Mayor Breed on January 24, 2023. This item is being referred for comment and recommendation.

File No. 230056

Ordinance amending the Health Code to repeal the City's permitting requirement for the operation of overdose prevention programs.

Please return this cover sheet with the Commission's response to John Carroll, Assistant Clerk, Youth, Young Adult, and Families Committee.

RESPONSE FROM YOUTH COMMISSION Date: _____

No Comment
 Recommendation Attached

Chairperson, Youth Commission

1 [Health Code - Overdose Prevention Programs]

2

3 **Ordinance amending the Health Code to repeal the City's permitting requirement for**
4 **the operation of overdose prevention programs.**

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

9

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

11

12 Section 1. Background.

13 (a) The City enacted Article 46 of the Health Code in 2020, via Ordinance No. 105-
14 20, to operationalize a bill then pending in the California Legislature, AB 362, that would have
15 authorized the City to issue permits for overdose prevention programs under certain
16 conditions. Article 46 authorized the City's Director of Health to issue permits and oversee
17 related requirements for the operation of overdose prevention programs, pursuant to the
18 pending state law. But AB 362 was never adopted into law, and so likewise, Article 46 was
19 never implemented, though it remains on the books.

20 (b) Since 2020, the drug crisis in San Francisco has continued, with over 1,200
21 accidental drug overdose deaths reported since 2021. To address this crisis, many
22 organizations that provide services to people with substance use disorders are exploring
23 innovative ways to prevent overdose deaths, including by establishing overdose prevention
24 programs.

25

1 (c) The Board of Supervisors finds it is appropriate to repeal Article 46 of the Health
2 Code at this time. It was drafted to conform to the requirements of a state law that never went
3 into effect, so it no longer serves its original purpose. In addition, eliminating barriers to the
4 operation of overdose prevention programs will facilitate the local response to the drug crisis.
5 The Board of Supervisors intends to revisit whether to establish a local permitting system for
6 overdose prevention programs in the event such a system is authorized or required by state
7 or federal law, and in the best interest of the City.

8
9 Section 2. Article 46 of the Health Code is hereby repealed, as follows:

10 ~~**ARTICLE 46: OVERDOSE PREVENTION PROGRAMS**~~

11 ~~**SEC. 4601. FINDINGS.**~~

12 ~~—(a) According to the San Francisco Department of Public Health (“DPH”), as of April 1,~~
13 ~~2019, San Francisco was home to an estimated 24,500 people who inject illegal drugs. Injection of~~
14 ~~illegal drugs in San Francisco is responsible for approximately 100 deaths per year due to overdoses.~~

15 ~~—(b) An overdose prevention program is an evidence-based harm reduction strategy that~~
16 ~~allows individuals to inject or consume illicit drugs in a hygienic environment under the supervision of~~
17 ~~trained staff, who are ready to intervene if the patient overdoses. Further, overdose prevention~~
18 ~~programs offer participants a variety of services, including linkage to medication-assisted treatment,~~
19 ~~medical care, and referrals to a variety of other social services. They also provide participants with~~
20 ~~sterile consumption equipment, safe removal of used consumption equipment, and fentanyl test strips.~~

21 ~~—(c) As of 2020, there were approximately 165 overdose prevention programs operating in ten~~
22 ~~countries around the world (Australia, Canada, Denmark, France, Germany, Luxembourg, the~~
23 ~~Netherlands, Norway, Spain, and Switzerland), and numerous peer-reviewed studies have confirmed~~
24 ~~that they are effective in reducing overdose deaths and drug-related risk behaviors, and in increasing~~
25 ~~access to counseling, treatment, and other risk reduction services. Research has also demonstrated that~~

1 ~~such programs decrease the prevalence of public injection and the amount of syringes in streets, alleys,~~
2 ~~and parks, and do not increase crime or drug use.~~

3 ~~—(d) In April 2017, by Resolution No. 123-17, the Board of Supervisors urged DPH to~~
4 ~~convene a task force to advise the Mayor, the Board of Supervisors, and relevant City departments~~
5 ~~regarding the possibility of operating overdose prevention programs in San Francisco. Consistent with~~
6 ~~that resolution, DPH convened a Task Force, and on October 25, 2017, presented a final report (“Task~~
7 ~~Force Report”) to the Board of Supervisors Public Safety and Neighborhood Services Committee. The~~
8 ~~Task Force Report concluded that opening one overdose prevention program in San Francisco could~~
9 ~~result in an annual net savings to the City of \$3.5 million in health care costs, and recommended that~~
10 ~~the City support the operation of overdose prevention programs in San Francisco.~~

11 ~~—(e) The Task Force Report further recommended that the opening of overdose prevention~~
12 ~~programs in the City be governed by the following principles:~~

13 ~~—(1) Overdose prevention programs offer an opportunity to affirm the humanity and dignity~~
14 ~~of people who consume drugs, and should be operated in a way that is safe, clean, and welcoming, so~~
15 ~~as to reduce stigma and build trust.~~

16 ~~—(2) When feasible, overdose prevention programs should reflect an integrated model that~~
17 ~~includes on-site services and linkages to other services.~~

18 ~~—(3) Peer staff are uniquely positioned to engage people who use drugs to use sanctioned~~
19 ~~services.~~

20 ~~—(f) In February 2019, the U.S. Attorney for the Eastern District of Pennsylvania filed a civil~~
21 ~~lawsuit against Safehouse, a nonprofit organization that had declared its intent to open and operate an~~
22 ~~overdose prevention program in Philadelphia. The lawsuit sought a declaratory judgment that~~
23 ~~overdose prevention programs violate a provision of the federal Controlled Substances Act colloquially~~
24 ~~known as the “Crack House” statute, which prohibits making a place available “for the purpose of~~
25 ~~unlawfully manufacturing, storing, distributing, or using a controlled substance.” 21 U.S.C. §~~

1 856(a)(2). On October 2, 2019, U.S. District Judge Gerald A. McHugh issued an opinion concluding
2 that section 856(a)(2) of the Controlled Substances Act does not prohibit Safehouse’s proposed
3 operation of an overdose prevention program because Safehouse does not plan to operate the program
4 “for the purpose of unlawful drug use” within the meaning of section 856(a)(2). On the contrary, the
5 court found that the ultimate goal of Safehouse’s proposed operation is to reduce drug use, not
6 facilitate it. The government has indicated it will appeal the ruling once the district court enters
7 judgment.

8 ~~—(g) Also in February 2019, State Senator Scott Wiener and Assembly Member Susan Eggman~~
9 ~~introduced a bill that would authorize the City to approve entities to operate overdose prevention~~
10 ~~programs that satisfy specified requirements. (AB 362). AB 362 passed in the Assembly in 2019, and~~
11 ~~will move to the Senate for consideration in 2020.~~

12 **~~SEC. 4602. DEFINITIONS.~~**

13 ~~—For purposes of this Article 46, the following definitions shall apply:~~

14 ~~—“Applicant” means a Person seeking to obtain an Overdose Prevention Program permit.~~

15 ~~—“City” means the City and County of San Francisco.~~

16 ~~—“Department” (or “DPH”) means the Department of Public Health.~~

17 ~~—“Director” means the Director of Public Health, or the Director’s designee.~~

18 ~~—“Health Care Professional” includes, but is not limited to, a physician, physician assistant,~~
19 ~~nurse practitioner, licensed vocational nurse, registered nurse, psychiatrist, psychologist, licensed~~
20 ~~clinical social worker, licensed professional clinical counselor, mental health provider, social service~~
21 ~~provider, or substance use disorder provider, trained in overdose recognition and reversal pursuant to~~
22 ~~Section 1714.22 of the Civil Code.~~

23 ~~—“Overdose Prevention Program” is a program that provides a hygienic space supervised by~~
24 ~~Health Care Professionals where persons 18 years of age or older who use controlled substances may~~
25 ~~consume preobtained drugs, and that is operated for the purposes of reducing the harm of drug use,~~

1 ~~administering medical care, encouraging drug treatment, and connecting participants to social or~~
2 ~~medical services.~~

3 ~~—“Permittee” means any Person to whom an Overdose Prevention Program permit is issued~~
4 ~~under this Article 46, and any authorized agent or designee of such Person.~~

5 ~~—“Person” means any natural person, corporation, sole proprietorship, partnership,~~
6 ~~association, joint venture, limited liability company, or other legal entity, not including the City.~~

7 **~~SEC. 4603. ADMINISTRATION AND ENFORCEMENT.~~**

8 ~~—This Article 46 shall be administered and enforced by DPH. The Director may adopt rules,~~
9 ~~regulations, and guidelines to carry out the provisions and purposes of this Article, including, but not~~
10 ~~limited to: eligibility criteria, operating guidelines, or reporting required by state law; hearing~~
11 ~~procedures; and standards for the imposition of administrative penalties, permit suspensions, and~~
12 ~~permit revocations.~~

13 **~~SEC. 4604. PERMIT REQUIRED; NONTRANSFERABLE.~~**

14 ~~—(a) It shall be unlawful to operate an Overdose Prevention Program in the City without~~
15 ~~obtaining and maintaining a permit therefor issued by DPH, and any such other licenses, permits,~~
16 ~~certifications, or registrations that may be required by State or City law.~~

17 ~~—(b) It shall be unlawful for any Person to operate an Overdose Prevention Program for~~
18 ~~which a permit has been granted under this Article 46 if such permit has been revoked, or during any~~
19 ~~period in which such permit is suspended or is otherwise inoperative.~~

20 ~~—(c) If any license, permit, certification, or registration required for the operation of an~~
21 ~~Overdose Prevention Program is denied, suspended, modified, revoked, or expired, the Overdose~~
22 ~~Prevention Program shall notify the Director of such action in writing within two business days of~~
23 ~~receiving actual or constructive notice of the denial, suspension, modification, revocation, or~~
24 ~~expiration.~~

1 ~~—(d) No permit issued under this Article 46 may be transferred by any means to any Person~~
2 ~~under any circumstance.~~

3 ~~—(e) No permit issued under this Article 46 may be operated at any location other than the~~
4 ~~location authorized by the permit.~~

5 ~~**SEC. 4605. APPLICATION FOR OVERDOSE PREVENTION PROGRAM PERMIT.**~~

6 ~~—Every Applicant for an Overdose Prevention Program permit shall:~~

7 ~~—(a) File an application with the Director upon a form provided by the Director;~~

8 ~~—(b) Provide such information and documentation as may be required by this Article 46, and~~
9 ~~any regulations promulgated thereunder, including but not necessarily limited to:~~

10 ~~—(1) The proposed location of the Overdose Prevention Program;~~

11 ~~—(2) The name, contact information, and address of the Applicant;~~

12 ~~—(3) Written verification that the owner of the real property (“Real Property”) where the~~
13 ~~Overdose Prevention Program will be located has the authority to consent, and consents, to its use as~~
14 ~~an Overdose Prevention Program. Such written verification must be signed by the property owner or~~
15 ~~the owner’s agent, and must include the owner’s contact information and, if applicable, the agent’s~~
16 ~~contact information;~~

17 ~~—(4) Where the Applicant leases the Real Property, a copy of the lease;~~

18 ~~—(5) A determination from the Planning Department that the proposed use of the Real~~
19 ~~Property as an Overdose Prevention Program is in compliance with the Planning Code; and~~

20 ~~—(6) An Operations Plan demonstrating that the Applicant, upon receipt of an Overdose~~
21 ~~Prevention Program permit, will:~~

22 ~~—(A) Provide a hygienic space supervised by one or more Health Care Professionals~~
23 ~~where people 18 years of age or older who use drugs can consume preobtained drugs;~~

24 ~~—(B) Provide sterile consumption supplies, collect used hypodermic needles and syringes,~~
25 ~~and provide secure hypodermic needle and syringe disposal services;~~

- 1 ~~——(C) Administer first aid, if needed, monitor participants for potential overdoses, and~~
2 ~~provide treatment as necessary to prevent fatal overdoses;~~
- 3 ~~——(D) Provide access or referrals to substance use disorder treatment services, medical~~
4 ~~services, mental health services, and social services;~~
- 5 ~~——(E) Educate participants on the risks of contracting HIV and viral hepatitis through use~~
6 ~~of drugs;~~
- 7 ~~——(F) Provide overdose prevention education and access to or referrals to obtain naloxone~~
8 ~~hydrochloride or another overdose reversal medication approved by the United States Food and Drug~~
9 ~~Administration;~~
- 10 ~~——(G) Educate participants regarding proper disposal of hypodermic needles and syringes;~~
- 11 ~~——(H) Provide reasonable security at the program site;~~
- 12 ~~——(I) Establish operating procedures for the program, made available to the public either~~
13 ~~through an internet website or upon request, that are publicly noticed, including, but not limited to,~~
14 ~~standard hours of operation, a minimum number of personnel required to be onsite during those hours~~
15 ~~of operation, the licensing and training standards for staff present, an established maximum number of~~
16 ~~individuals who can be served at the Overdose Prevention Program at one time, and an established~~
17 ~~relationship with the nearest emergency department of a general acute care hospital, as well as~~
18 ~~eligibility criteria for program participants;~~
- 19 ~~——(J) Train staff members to deliver services offered by the program;~~
- 20 ~~——(K) Establish a good neighbor policy that facilitates communication from and to local~~
21 ~~businesses and residences, to the extent they exist, to address any neighborhood concerns and~~
22 ~~complaints; and~~
- 23 ~~——(L) Establish a policy for informing City officials and neighbors about procedures to~~
24 ~~complain to the Permittee, and, as applicable, DPH, about the Overdose Prevention Program,~~
25 ~~including contact information for the director, manager, or operator of the program.~~

1 **~~SEC. 4606. HEARING ON PERMIT APPLICATION; NOTICE OF HEARING.~~**

2 ~~—(a) After receiving a completed application, the Director shall schedule a hearing on the~~
3 ~~application to provide law enforcement officials, local public health officials, and the public with an~~
4 ~~opportunity to comment.~~

5 ~~—(b) No fewer than 10 days before the date of the hearing, the Applicant shall cause to be~~
6 ~~posted a notice of such hearing in a conspicuous place on the property at which the proposed Overdose~~
7 ~~Prevention Project is to be operated. The Applicant shall comply with any requirements regarding the~~
8 ~~size and type of notice specified by the Director. The Applicant shall maintain the notice as posted the~~
9 ~~required number of days.~~

10 **~~SEC. 4607. ISSUANCE AND DENIAL OF OVERDOSE PREVENTION PROGRAM~~**
11 **~~PERMIT.~~**

12 ~~—(a) Within 14 days following the hearing on an application for an Overdose Prevention~~
13 ~~Program permit, the Director shall either issue the permit or mail a written statement of the Director's~~
14 ~~reasons for denial thereof to the Applicant.~~

15 ~~—(b) In granting a permit, the Director may impose conditions as are, in the Director's~~
16 ~~judgment, necessary and appropriate to protect the health and safety of the Permittee's employees or~~
17 ~~contractors working in the Overdose Prevention Program, businesses and residents in the~~
18 ~~neighborhood, and/or participants in the program, and to reduce any potential adverse impacts of the~~
19 ~~program on the neighborhood. Such conditions may include, but are not limited to, conditions relating~~
20 ~~to the hours of operation of the program.~~

21 ~~—(c) No Overdose Prevention Program permit may be issued if the Director finds that:~~

22 ~~—(1) The Applicant has provided materially false documents, testimony, or other~~
23 ~~information, or has omitted material information;~~

24 ~~—(2) The Applicant has not complied fully with the provisions of this Article 46; or~~

1 ~~—(3) The operation as proposed by the Applicant, if permitted, would not comply with all~~
2 ~~applicable City law, including the provisions of this Article 46 and regulations issued by the Director~~
3 ~~pursuant to this Article, and/or with any state law governing the operation of an Overdose Prevention~~
4 ~~Program.~~

5 ~~—(d) The final permit shall contain the following language: “Issuance of this permit by the~~
6 ~~City and County of San Francisco is not intended to and does not authorize the violation of State or~~
7 ~~Federal law.”~~

8 ~~—(e) A permit issued under this Article 46 shall not be operative and shall not authorize the~~
9 ~~operation of an Overdose Prevention Program unless and until state law authorizes the City to approve~~
10 ~~Persons to operate Overdose Prevention Programs.~~

11 ~~**SEC. 4608. ELIGIBILITY AND OPERATING STANDARDS.**~~

12 ~~—Every Overdose Prevention Program shall:~~

13 ~~—(a) Comply with the terms of its Operations Plan as described in subsection (b)(6) of Section~~
14 ~~4605;~~

15 ~~—(b) Prohibit entry onto the premises by persons under age 18;~~

16 ~~—(c) Strive to implement the operational recommendations in the Task Force Report~~
17 ~~referenced in subsection (d) of Section 4601 by, among other things: designing a space that is safe,~~
18 ~~clean, and welcoming, and that reduces the stigma and inherent dangers of public drug use; employing~~
19 ~~an integrated model that includes on-site services and linkages to other services; and incorporating a~~
20 ~~peer component in the staffing model.~~

21 ~~**SEC. 4609. INSPECTIONS.**~~

22 ~~—Any employee of DPH may enter and inspect the premises of any Overdose Prevention~~
23 ~~Program to determine whether the program is operating in compliance with this Article 46 and with~~
24 ~~conditions of the Overdose Prevention Program permit. DPH shall provide 24 hours’ advance notice of~~
25

1 ~~its intent to enter and inspect the premises, except where the inspection is needed to address emergency~~
2 ~~circumstances that present an imminent risk to health or safety.~~

3 ~~**SEC. 4610. REPORTING.**~~

4 ~~—Within one year of being issued a permit under Section 4607, and every year thereafter, a~~
5 ~~Permittee shall submit to DPH a report that shall include all of the following information:~~

6 ~~—(a) The number of participants in the Overdose Prevention Program;~~

7 ~~—(b) Aggregate information regarding the characteristics of program participants;~~

8 ~~—(c) The number of hypodermic needles and syringes distributed for use onsite;~~

9 ~~—(d) The number of overdoses experienced and the number of overdoses reversed onsite;~~

10 ~~—(e) The number of persons referred to drug treatment;~~

11 ~~—(f) The number of individuals directly and formally referred to other services, and the type of~~
12 ~~those services; and~~

13 ~~—(g) Such other information as the Director, in the Director’s discretion, shall require.~~

14 ~~**SEC. 4611. NOTICE OF VIOLATION; HEARING AND APPEAL.**~~

15 ~~—(a) If the Director determines that an Overdose Prevention Program is operating in violation~~
16 ~~of this Article 46 (which term is deemed in the entirety of this Section 4611 to include a violation of a~~
17 ~~permit condition and/or a violation of the rules and regulations adopted pursuant to this Article), or~~
18 ~~state law regulating the operation of Overdose Prevention Programs, the Director may issue a Notice~~
19 ~~of Violation to the Permittee, the owner of the real property where the violation occurred (“Owner”),~~
20 ~~and/or any other Persons the Director deems responsible for causing the violation (“Other Persons,”~~
21 ~~which term is deemed in the entirety of this Section 4611 to include Persons responsible for operating~~
22 ~~an Overdose Prevention Program in violation of Section 4604).~~

23 ~~—(b) The Notice of Violation shall include the following information:~~

24 ~~—(1) That the Director has made a determination that the Overdose Prevention Program is~~
25 ~~operating in violation of this Article 46;~~

1 ~~—(2) The alleged acts or failures to act that constitute the basis for the Director’s~~
2 ~~determination;~~

3 ~~—(3) That the Director intends to take enforcement action against the Permittee, Owner, or~~
4 ~~Other Person, and the nature of that action, including the administrative penalty and enforcement costs~~
5 ~~to be imposed, additional permit conditions that may be imposed, and/or the suspension or revocation~~
6 ~~of the Overdose Prevention Program permit;~~

7 ~~—(4) That the Permittee, Owner, or Other Persons has the right to request a hearing before~~
8 ~~the Director within 30 days after the Notice of Violation is mailed via U.S. mail or electronic mail, and~~
9 ~~that the written request for hearing must state facts demonstrating that:~~

10 ~~—(A) If the violation is disputed, the Overdose Prevention Program was operating in~~
11 ~~compliance with this Article 46 and/or the rules and regulations adopted pursuant to this Article; and~~

12 ~~—(B) Whether or not the alleged violation is disputed, the Overdose Prevention Program is~~
13 ~~currently operating in compliance with this Article 46, the rules and regulations adopted pursuant to~~
14 ~~this Article, and conditions of the permit, and that the Permittee, Owner, or Other Person has taken~~
15 ~~reasonable steps to prevent violations similar to the alleged violation, and has arranged for the~~
16 ~~Director to re-inspect the Overdose Prevention Program to confirm such reasonable steps. Where no~~
17 ~~such showing has been made, the Permittee, Owner, or Other Person served with a notice or order by~~
18 ~~the Director setting forth the nature of the violation of this Article shall be presumed, in subsequent~~
19 ~~administrative or civil proceedings, to have committed and not to have corrected such violation.~~

20 ~~—(c) If no request for a hearing is filed with the Director within the required period, or the~~
21 ~~request for hearing does not include the information required by subsection (b)(4) of this Section 4611,~~
22 ~~the right to request a hearing shall be deemed waived, and the Director’s determination shall become~~
23 ~~final and effective 30 days after the Notice of Violation was mailed via U.S. mail or electronic mail. The~~
24 ~~Director shall issue an order imposing the enforcement action and mail the order to the Permittee,~~
25 ~~Owner, or Other Person served with the Notice of Violation. In subsequent civil proceedings, such~~

1 ~~violations shall be presumed not to have been corrected. Where no hearing is timely requested, an~~
2 ~~order suspending, revoking, or imposing additional conditions on a permit is final. The failure of the~~
3 ~~Permittee, Owner, or Other Person on whom the Notice of Violation was served to request a hearing~~
4 ~~shall constitute a failure to exhaust administrative remedies and shall preclude the Person from~~
5 ~~obtaining judicial review of the validity of the enforcement action.~~

6 ~~—(d) Upon a timely request for a hearing that includes the information required by subsection~~
7 ~~(b)(4) of this Section 4611, the Director shall, within 15 days of the request, notify the requester of the~~
8 ~~date, time, and place of the hearing. The Director shall make available to the requester the evidence~~
9 ~~obtained in support of the Notice of Violation as well as a copy of the report, if any, prepared by the~~
10 ~~Director’s designee to support the Notice of Violation. Such hearing shall be held no later than 60 days~~
11 ~~after the Director receives the request, unless time is extended by mutual agreement of the requester~~
12 ~~and the Director.~~

13 ~~—(e) The Director shall conduct the hearing, or may designate a hearing officer to conduct the~~
14 ~~hearing, in which case the hearing officer shall have the same authority as the Director to hear and~~
15 ~~decide the case and make any orders consistent with this Article 46. The Permittee, Owner, or Other~~
16 ~~Person, as well as the Department, may present evidence for consideration, subject to any rules~~
17 ~~adopted by the Director or hearing officer for the orderly conduct of the hearing. Within 30 days of the~~
18 ~~conclusion of the hearing, the Director or hearing officer shall render a decision in the form of a~~
19 ~~written order, which the Director shall promptly serve on the Permittee, Owner, or Other Person~~
20 ~~charged in the Notice of Violation. The order shall state whether the Notice of Violation has been~~
21 ~~upheld (in whole or in part), and, if so, the enforcement action taken against each party.~~

22 ~~—(f) If the order directs the Permittee, Owner, or Other Person to pay an administrative~~
23 ~~penalty and/or enforcement costs, such amount shall be paid within ten days from the mailing of the~~
24 ~~order, which shall inform the recipient of said deadline for payment.~~

1 ~~—(g) If the order suspends or revokes a permit, or imposes additional permit conditions, it may~~
2 ~~be appealed to the Board of Appeals in the manner prescribed in Article 1 of the Business and Tax~~
3 ~~Regulations Code; the order shall inform the recipient of such right to appeal.~~

4 **~~SEC. 4612. ADMINISTRATIVE PENALTIES AND ENFORCEMENT COSTS.~~**

5 ~~—(a) Any Person who violates this Article 46 (which term is deemed in the entirety of this~~
6 ~~Section 4612 to include a violation of a permit condition and/or a violation of the rules and regulations~~
7 ~~adopted pursuant to this Article), or state law regulating the operation of Overdose Prevention~~
8 ~~Programs shall be subject to an administrative penalty imposed by order of the Director, not to exceed~~
9 ~~\$1,000 for each violation.~~

10 ~~—(b) In setting the amount of the administrative penalty, the Director shall consider any one~~
11 ~~or more of the relevant circumstances presented, including but not limited to the following: the nature~~
12 ~~and seriousness of the misconduct giving rise to the violation, the number of violations, the persistence~~
13 ~~of the misconduct, the length of time over which the misconduct occurred, the willfulness of the~~
14 ~~responsible party's misconduct, and the responsible party's assets, liabilities, and net worth.~~

15 **~~SEC. 4613. PERMIT SUSPENSIONS AND REVOCATIONS.~~**

16 ~~—(a) The Director may revoke or suspend any Overdose Prevention Program permit if the~~
17 ~~Director finds any of the following circumstances to exist:~~

18 ~~—(1) Facts sufficient to support the denial of such permit on any ground set forth in Section~~
19 ~~4607 of this Article 46;~~

20 ~~—(2) The Permittee has refused to permit an inspection of its operations under this Article;~~

21 ~~—(3) The Permittee has engaged in any conduct in connection with the operation of the~~
22 ~~Overdose Prevention Program that violates this Article 46 (which term is deemed in the entirety of this~~
23 ~~Section 4613 to include a violation of a permit condition and/or a violation of the rules and regulations~~
24 ~~adopted pursuant to this Article), or state law regulating the operation of Overdose Prevention~~
25 ~~Programs;~~

1 ~~—(4) The Director determines that such Overdose Prevention Program is being managed,~~
2 ~~conducted, or maintained in a way that threatens the health or safety of program participants,~~
3 ~~employees or contractors of the Permittee, businesses or residents in the neighborhood, or the public at~~
4 ~~large.~~

5 ~~—(b) The Director may not suspend or revoke an Overdose Prevention Program permit under~~
6 ~~this Article 46 until the Director has issued a Notice of Violation and provided the Permittee an~~
7 ~~opportunity to be heard and respond as provided in Section 4611 of this Article 46. A Permittee whose~~
8 ~~permit has been suspended or revoked must cease operations of the Overdose Prevention Program~~
9 ~~within 24 hours of the suspension or revocation order being final.~~

10 ~~—(c) Notwithstanding subsection (b) of this Section 4613, the Director may suspend summarily~~
11 ~~any Overdose Prevention Program permit issued under this Article 46 when, in the judgment of the~~
12 ~~Director, the public health or safety requires such summary suspension.~~

13 ~~—(1) A summary suspension shall take effect immediately upon its issuance, or at such time~~
14 ~~as stated in the summary suspension.~~

15 ~~—(2) The Director shall provide written notice of such summary suspension including the~~
16 ~~grounds supporting the suspension to the Permittee by hand delivery, registered mail, or electronic~~
17 ~~mail.~~

18 ~~—(3) No more than three days after written notice of such summary suspension is given, the~~
19 ~~Director shall issue a Notice of Violation identifying the alleged acts or failures to act that constitute~~
20 ~~the basis for the summary suspension, and provide the Permittee an opportunity to be heard and~~
21 ~~respond as provided in Section 4611 as to why the summary suspension should end. However, the time~~
22 ~~for hearing and decision shall be accelerated as follows: Upon a timely request for a hearing on a~~
23 ~~summary suspension that includes the information required by subsection (b)(4) of Section 4611, the~~
24 ~~Director shall set any requested hearing within seven days, unless time is extended by mutual~~
25 ~~agreement of the affected parties; and the Director, or a designated hearing officer who shall have the~~

1 ~~same authority as the Director to hear and decide the case and make any orders consistent with this~~
2 ~~Article 46 shall issue a decision on the summary suspension within seven days after hearing.~~

3 ~~— (4) If the Permittee appeals a decision by the Director or hearing officer upholding a~~
4 ~~summary suspension to the Board of Appeals, the summary suspension shall remain in effect until a~~
5 ~~final decision is issued by the Board of Appeals. Where a permit is revoked after a summary~~
6 ~~suspension, the revocation shall be effective immediately and, if the Permittee appeals to the Board of~~
7 ~~Appeals, shall remain in effect until a final decision is issued by the Board of Appeals.~~

8 **~~SEC. 4614. ADDITIONAL ADMINISTRATIVE ENFORCEMENT ORDERS.~~**

9 ~~— (a) Upon a determination by the Director that any Overdose Prevention Program is~~
10 ~~operating without a valid, effective, and current permit required by this Article 46, the Director may~~
11 ~~issue an Order to Cease Operations Without Permit, which shall be posted prominently on the premises~~
12 ~~where an Overdose Prevention Program is operated, and mailed to the Person and/or Persons~~
13 ~~operating said program. Such Order shall state:~~

14 ~~— (1) That the Overdose Prevention Program has 24 hours from the time of posting to~~
15 ~~demonstrate to the Director's satisfaction that the program is operating under a valid, effective, and~~
16 ~~current permit;~~

17 ~~— (2) If the Overdose Prevention Program has not made such demonstration within 24 hours~~
18 ~~of the time of posting, that the program must immediately cease operations until such time as it~~
19 ~~demonstrates to the Director's satisfaction that it is operating under a valid, effective, and current~~
20 ~~permit; and~~

21 ~~— (3) If the Overdose Prevention Program fails to cease operations as required by this~~
22 ~~subsection (a), that the Director shall issue an Immediate Closure Order directing the closure of the~~
23 ~~Premises where the program has been operating or the portion of the Premises the Director determines~~
24 ~~should be closed.~~

1 ~~—(b) As set forth in subsection (b) of Section 4613, an Overdose Prevention Program whose~~
2 ~~permit has been suspended or revoked must cease operations within 24 hours of the suspension or~~
3 ~~revocation order being final. The Director is not required to issue an Order to Cease Operations~~
4 ~~without a Permit to an Overdose Prevention Program whose permit is the subject of a final order of~~
5 ~~suspension or revocation.~~

6 ~~—(c) The Director may issue an Immediate Closure Order ordering closure of an Overdose~~
7 ~~Prevention Program under the following circumstances:~~

8 ~~—(1) If, by 72 hours after the issuance of an Order to Cease Operations Without Permit, the~~
9 ~~Overdose Prevention Program has not demonstrated to the Director’s satisfaction that the program has~~
10 ~~the required permit, and the program nevertheless continues to operate;~~

11 ~~—(2) If, by 24 hours after the suspension or revocation of an Overdose Prevention Program~~
12 ~~permit becomes final, the program continues to operate;~~

13 ~~—(3) Without delay, after issuance of a summary suspension.~~

14 ~~—(d) It is the duty of any person responsible for managing or otherwise operating an Overdose~~
15 ~~Prevention Program, or owning the business under which the program operates, or owning the real~~
16 ~~property where the program operates, to obey all orders issued under this Section 4614. To enforce an~~
17 ~~Immediate Closure Order, the Director shall take such steps as the Director views as necessary and~~
18 ~~appropriate to enforce said order, including but not limited to securing and barricading the premises~~
19 ~~where the program has been operating. The Director is hereby authorized to call upon the Police~~
20 ~~Department and other departments and bureaus to aid and assist the Director in such enforcement, and~~
21 ~~it shall then be their duty to enforce the provisions of this Article 46 and to perform such duties as may~~
22 ~~come within their respective jurisdictions.~~

1 **~~SEC. 4615. LAW ENFORCEMENT POLICY.~~**

2 ~~—It shall be the policy of the City and County of San Francisco to deprioritize enforcement of~~
3 ~~laws prohibiting the possession of illegal drugs and drug paraphernalia against those individuals who~~
4 ~~are presently accessing, intend to access, or have just accessed an Overdose Prevention Program.~~

5 **~~SEC. 4616. UNDERTAKING FOR THE GENERAL WELFARE.~~**

6 ~~—In enacting and implementing this Article 46, the City is assuming an undertaking only to~~
7 ~~promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an~~
8 ~~obligation for breach of which it is liable in money damages to any person who claims that such breach~~
9 ~~proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability~~
10 ~~whatsoever, and expressly does not waive sovereign immunity, with respect to the permitting and~~
11 ~~licensing provisions of this Article, or for the activities of any Overdose Prevention Program. To the~~
12 ~~fullest extent permitted by law, any actions taken or not taken by a City officer or employee under the~~
13 ~~provisions of this Article, or taken or not taken by a Permittee, shall not become a personal liability of~~
14 ~~any City officer or employee.~~

15 **~~SEC. 4617. SEVERABILITY.~~**

16 ~~—If any section, subsection, sentence, clause, phrase, or word of this Article 46, or any~~
17 ~~application thereof to any person or circumstance, is held to be invalid or unconstitutional by a~~
18 ~~decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining~~
19 ~~portions or applications of the Article. The Board of Supervisors hereby declares that it would have~~
20 ~~passed this Article and each and every section, subsection, sentence, clause, phrase, and word not~~
21 ~~declared invalid or unconstitutional without regard to whether any other portion of this ordinance or~~
22 ~~application thereof would be subsequently declared invalid or unconstitutional.~~

23
24 Section 3. Future Legislation. The Director of Health, in consultation with the City
25 Attorney, shall notify the Board of Supervisors if either state or federal law are amended to

1 authorize or require the City to issue permits (including licenses, certifications, registrations, or
2 similar approvals) for the operation of overdose prevention programs, so that the Board of
3 Supervisors may consider whether to readopt Article 46 of the Health Code, either in its
4 original form or with amendments to comply with the authorizing state or federal law or as the
5 Board may otherwise deem appropriate.

6

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

11

12 APPROVED AS TO FORM:
13 DAVID CHIU, City Attorney

14 By: /s/
15 MANU PRADHAN
Deputy City Attorney

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LEGISLATIVE DIGEST

[Health Code - Overdose Prevention Programs]

Ordinance amending the Health Code to repeal the City’s permitting requirement for the operation of overdose prevention programs.

Existing Law

Article 46 of the Health Code authorizes the Director of Health to issue permits and oversee related requirements for the operation of overdose prevention programs, subject to State law.

Amendments to Current Law

The ordinance would repeal Article 46 of the Health Code.

Background Information

Article 46 was intended to operationalize a bill previously pending in the State Legislature, AB 362, that would have authorized the City to issue permits for overdose prevention programs under certain conditions. But AB 362 was never adopted into law, and so likewise, Article 46 was never implemented.

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OFFICE OF THE MAYOR
SAN FRANCISCO



LONDON N. BREED
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Tom Paulino, Liaison to the Board of Supervisors
RE: Health Code - Overdose Prevention Programs
DATE: January 25, 2023

Ordinance amending the Health Code to repeal the City's permitting requirement for the operation of overdose prevention programs.

Should you have any questions, please contact Tom Paulino at 415-554-6153.