

BOARD of SUPERVISORS



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

MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Malia Cohen, Chair
Land Use and Transportation Committee

FROM: Andrea Ausberry, Assistant Clerk

DATE: April 11, 2016

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, April 12, 2016

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, April 12, 2016. This item was acted upon at the Committee Meeting on Monday, April 11, 2016, at 1:30 p.m., by the votes indicated.

Item No. 24 File No. 160253

Ordinance exempting The Humidor, formerly located at 275 Battery Street, from two prohibitions in the Tobacco Sales Permit Ordinance on the issuance of such a permit for The Humidor's new location at One Embarcadero Center: the prohibitions on issuing the permit in a Supervisorial District with 45 or more such permits, and on issuing the permit to a tobacco shop.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Malia Cohen - Aye
Supervisor Scott Wiener - Aye
Supervisor Aaron Peskin - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Jon Givner, Deputy City Attorney

File No. 160253

Committee Item No. 1

Board Item No. 24

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date April 11, 2016

Board of Supervisors Meeting

Date April 12, 2016

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 700 |
| <input type="checkbox"/> | <input type="checkbox"/> | Vacancy Notice |
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OTHER (Use back side if additional space is needed)

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Completed by: Andrea Ausberry

Date April 7, 2016

Completed by: Andrea Ausberry

Date April 12, 2016

[Health Code - Exempting The Humidor from Certain Provisions of the Tobacco Sales Permit Ordinance]

Ordinance exempting The Humidor, formerly located at 275 Battery Street, from two prohibitions in the Tobacco Sales Permit Ordinance on the issuance of such a permit for The Humidor's new location at One Embarcadero Center: the prohibitions on issuing the permit in a Supervisorial District with 45 or more such permits, and on issuing the permit to a tobacco shop.

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

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

Section 1. General Background and Findings.

(a) The Humidor was founded in Santa Rosa in the mid-1980s as a family business by Baram Bakhshi, Javid Bakhshi, Jamshid Bakhshi, and Habid Bakhshi. The Humidor moved to San Francisco in 1990 and has occupied several different locations in San Francisco. It has been in operation in San Francisco (with no breaks in operation of more than two years) for a 26 years. In 2003, The Humidor moved to One Embarcadero Center, into a space that had previously been operated as a Tobacco Shop. In 2006, The Humidor moved into a new location at 275 Battery Street. It has been at that location from 2006 to 2016. During the entirety of its operations in San Francisco, The Humidor has been a Tobacco Shop operating with a tobacco sales permit.

1 (b) The Humidor has been nominated for inclusion on the Legacy Business Registry
2 as a longstanding, community serving business and a valuable cultural asset of the City.

3 (c) In late 2015, the building at 275 Battery Street was sold to new owners who
4 have refused to renew The Humidor's lease. The Humidor, after negotiations with a new
5 landlord, is entering into a lease for a space at One Embarcadero Center, which is not the
6 space it occupied there from 2003 to 2006.

7 (d) Section 19H.5 of the Health Code caps the number of establishments with
8 tobacco sales permits in every supervisorial district at 45. Further, Section 19H.4(f)(5) of the
9 Health Code states that no new tobacco sales permit shall be issued in any supervisorial
10 district that has 45 or more establishments with tobacco sales permits. The supervisorial
11 district in which The Humidor intends to be located, at One Embarcadero Center, is the same
12 supervisorial district where The Humidor has been located, at 275 Battery Street, and the
13 district has 45 or more establishments with tobacco sales permits.

14 (e) Section 19H.4(f)(7) of the Health Code states that no new permits shall be
15 issued for the operation of a Tobacco Shop. The Humidor is a Tobacco Shop.

16 (f) Based on the facts as stated in this Section 1, reasonable grounds support
17 granting The Humidor an exception to Sections 19H.4(f)(5) and 19H.4(f)(7) of the Health
18 Code, and Section 19H.5 to the extent that that section reiterates the ban on issuance of more
19 than 45 tobacco sales permits in a supervisorial district. The Humidor is a longstanding
20 holder of a tobacco sales permit. Its new location, at One Embarcadero Street, is less than
21 300 feet away from its previous location at 275 Battery Street, and is in the same supervisorial
22 district. Issuing a tobacco sales permit to The Humidor at its new location will not change the
23 number of such permits in that supervisorial district that existed when The Humidor had its
24 tobacco sales permit at its previous location on Battery Street. Further, the space occupied
25 by The Humidor at 275 Battery Street is approximately 970 square feet, while the space that

Humidor plans to occupy at One Embarcadero Center is approximately 730 square feet. Accordingly, The Humidor will be devoting fewer square feet to tobacco product sales at One Embarcadero Center than at its previous location at 275 Battery Street.

Section 2. Exemption of The Humidor From Certain Requirements of Health Code Sections 19H.4 and 19H.5.

For the reasons stated in Section 1 of this ordinance, The Humidor, under its current ownership, is hereby exempted from the requirements of Sections 19H.4(f)(5) and 19H.4(f)(7) of the Health Code, and Section 19H.5 to the extent that that section reiterates the ban on issuance of more than 45 tobacco sales permits in a supervisorial district. In providing for this exemption, it is intended that the aforementioned provisions not serve as a barrier to The Humidor's obtaining a tobacco sales permit at its new location at One Embarcadero Center. This ordinance is intended to apply solely to that location.

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

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

By: 
ALEETA M. VAN RUNKLE
Deputy City Attorney

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LEGISLATIVE DIGEST

[Health Code - Exempting The Humidor from Certain Provisions of the Tobacco Sales Permit Ordinance]

Ordinance exempting The Humidor, formerly located at 275 Battery Street, from two prohibitions in the Tobacco Sales Permit Ordinance on the issuance of such a permit for The Humidor's new location at One Embarcadero Center: the prohibitions on issuing the permit in a Supervisorial District with 45 or more such permits, and on issuing the permit to a tobacco shop.

Existing Law

Section 19H.5 of the Health Code caps the number of establishments with tobacco sales permits in every supervisorial district at 45. Further, Section 19H.4(f)(5) of the Health Code states that no new tobacco sales permit shall be issued in any supervisorial district that has 45 or more establishments with tobacco sales permits.

Section 19H.4(f)(7) of the Health Code states that no new permits shall be issued for the operation of a Tobacco Shop.

Amendments to Current Law

This proposed ordinance will allow an exception to the requirements in Sections 19H.4 and 19H.5 for The Humidor. The Humidor is a longstanding holder of a tobacco sales permit. Its new location, at One Embarcadero Street, is less than 300 feet away from its previous location at 275 Battery Street, and is in the same supervisorial district. Issuing a tobacco sales permit to The Humidor at its new location will not change the number of such permits in that supervisorial district that existed when The Humidor held a tobacco sales permit at its previous location on Battery Street. Further, the space occupied by The Humidor at 275 Battery St. is approximately 970 square feet, while the space that The Humidor plans to occupy at One Embarcadero Center is approximately 730 square feet. Accordingly, The Humidor will be devoting fewer square feet to tobacco product sales at One Embarcadero Center than at its previous location at 275 Battery Street.

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160253



City and County of San Francisco
Edwin M. Lee
Mayor

San Francisco Department of Public Health

Barbara A. Garcia, MPA
Director of Health

April 8, 2016

Supervisor Peskin
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

SUBJECT: Health Code - Exempting The Humidor from Certain Provisions of the Tobacco Sales Permit Ordinance

Dear Supervisor Peskin:

The San Francisco Department of Public Health (SFDPH) is writing in regard to File No. 160253 which would exempt the Humidor from provisions in the Tobacco Sales Permit Ordinance. SFDPH is aware that the Humidor Tobacco Shop was unable to renew its lease after 10 years of business at 275 Battery Street in Supervisorial District 3 and is seeking a new tobacco sales permit at One Embarcadero Center. We understand the predicament that this creates for the owners of this family business. However, the Tobacco Sales Permit Ordinance (File No. 141098) which was passed by the Board of Supervisors in December of 2014, aims to reduce the density of tobacco providers through attrition in order to counteract the disproportionate distribution of tobacco permits among supervisorial districts.

Though the Humidor was a longstanding holder of a tobacco sales permit, the intent of the Tobacco Sales Permit Ordinance is to decrease opportunities for tobacco sales in San Francisco, and reduce disproportionate exposure to tobacco outlets that exist among supervisorial districts. Supervisorial District 3 contains the greatest number of stores selling tobacco compared to other districts (167 stores), contains 18% of all tobacco retailers in San Francisco, and has one of the lowest median household incomes. Research shows that communities in lower socio-economic areas with a higher concentration of stores have significantly higher rates of smoking. Similarly, communities with a higher concentration of stores that sell tobacco also have a higher youth smoking rate.

Tobacco is the leading cause of preventable death in the United States. Areas with high smoking prevalence also have greater exposure to secondhand smoke for non-smokers which can exacerbate a wide range of health effects. For these reasons, the Department of Public Health opposes an exception to the law that was intended to support the health of San Francisco's youth and residents.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colleen Chawla".

Colleen Chawla

The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.

We shall ~ Assess and research the health of the community ~ Develop and enforce health policy ~ Prevent disease and injury ~
~ Educate the public and train health care providers ~ Provide quality, comprehensive, culturally-proficient health services ~ Ensure equal access to all

barbara.garcia@sfdph.org ♦ (415) 554-2526 ♦ 101 Grove Street, Room 308, San Francisco, CA 94102

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Barbara Garcia, Director, Department of Public Health
John Rahaim, Director, Planning Department
Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector
Regina Dick-Endrizzi, Director, Office of Small Business

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

DATE: March 21, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Peskin on March 15, 2016:

File No. 160253

Ordinance exempting The Humidor, formerly located at 275 Battery Street, from two prohibitions in the Tobacco Sales Permit Ordinance on the issuance of such a permit for The Humidor's new location at One Embarcadero Center: the prohibitions on issuing the permit in a Supervisorial District with 45 or more such permits, and on issuing the permit to a tobacco shop.

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: Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health
Scott Sanchez, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department
Amanda Kahn Fried, Office of the Treasurer and Tax Collector

Member, Board of Supervisors
District 10



City and County of San Francisco

ORIG: ROB

Ln Clerk, Leg
Dep

MALIA COHEN
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DATE: April 5, 2016

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Malia Cohen

RE: Land Use and Transportation Committee
COMMITTEE REPORT

APR 5 2016
2016 APR -6 AM 11:59
BOARD OF SUPERVISORS
SAN FRANCISCO

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on April 12 2016, as a Committee Report:

160253 Health Code - Exempting The Humidor from Certain Provisions of the Tobacco Sales Permit Ordinance

Ordinance exempting The Humidor, formerly located at 275 Battery Street, from two prohibitions in the Tobacco Sales Permit Ordinance on the issuance of such a permit for The Humidor's new location at One Embarcadero Center: the prohibitions on issuing the permit in a Supervisorial District with 45 or more such permits, and on issuing the permit to a tobacco shop.

This matter will be heard in the Land Use and Transportation Committee Regular Meeting on April 11, 2016, at 1:30 p.m.

Sincerely,

A handwritten signature in cursive script that reads "Malia".

Malia Cohen
Member, Board of Supervisors

President, District 5
BOARD of SUPERVISORS



City Hall
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

BOS-11, CoB, PSNS
LM, Leg Dep.
Dip City atty
Mayor

London Breed

PRESIDENTIAL ACTION

Date: April 4, 2016

To: Angela Calvillo, Clerk of the Board of Supervisors

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. 160253

Peskin

(Primary Sponsor)

Title.

Ordinance exempting The Humidor, formerly located at 275 Battery Street, from two prohibitions in the Tobacco Sales Permit Ordinance

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

London Breed, President
Board of Supervisors

President, District 5
BOARD of SUPERVISORS



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3/21/2016 @ 4:59pm
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1 Dr. Carlton B. Goodlett Place, Room 244 PSNS
San Francisco 94102-4689
Tel. No. 554-7630
Fax No. 554-7634
TDD/TTY No. 544-5227
Mayor's office

London Breed

PRESIDENTIAL ACTION

Date: March 21, 2016

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

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

File No. 160253 Peskin
(Primary Sponsor)

Title. Exempting The Humidor from Certain Provisions of the Tobacco Sales Permit Ordinance

☐ Transferring (Board Rule No 3.3)

File No. _____
(Primary Sponsor)

Title. _____

From: _____ Committee

To: _____ Committee

☐ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)

A handwritten signature in cursive script that reads "London Breed".

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. Reactivate File No.
- ☐ 10. 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 Form.

Sponsor(s):

Supervisor Aaron Peskin

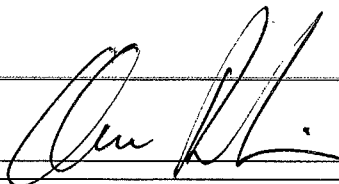
Subject:

Ordinance exempting The Humidor, formerly located at 275 Battery St., from two prohibitions in the Tobacco Sales Permit Ordinance on the issuance of such a permit at The Humidor's new location at One Embarcadero Center.

The text is listed below or attached:

Attached.

Signature of Sponsoring Supervisor:



For Clerk's Use Only: