

## **LEGISLATIVE DIGEST**

[Health Code - Restricting Commercial Tobacco Activities on City Property]

**Ordinance amending the Health Code to prohibit the sale, manufacture, and distribution of tobacco products, including electronic cigarettes, on City property.**

### **Existing Law**

Currently, Article 19K of the Health Code prohibits the sale and advertising of tobacco products that contain tobacco leaf (such as cigarettes, cigars, and pipe tobacco) on property owned by or under the control of the City and County of San Francisco (the “City”). Article 19K also requires that the prohibition on selling and advertising tobacco products on City property be included in all leases, permits, or agreements awarded by the City that allow any person to use City property for retail purposes. Article 19K includes an exception for the passenger terminal complex at San Francisco International Airport, where tobacco products may be sold.

### **Amendments to Current Law**

The proposed ordinance would amend Article 19K to prohibit not only the sale, but also the distribution and manufacture of tobacco products on City property. It would also update the definition of “tobacco products” to conform to other local laws, which define tobacco products to include products made or derived from tobacco or nicotine, including electronic cigarettes. The proposed ordinance would require that the prohibition on commercial tobacco activities be incorporated into all City leases, subleases, and agreements authorizing the use of City property, and not just those agreements that are for retail activities. It would also authorize the City Attorney to institute civil proceedings for injunctive and monetary relief to address violations of Article 19K.

### **Background Information**

Despite progress in reducing smoking, tobacco use is still the leading cause of preventable death in the United States. Tobacco kills more than 480,000 people in this country annually – more than AIDS, alcohol, car accidents, illegal drugs, murders, and suicides combined.

The City and County of San Francisco (“City”) has been a leader in local tobacco control policy. To reduce the burden of tobacco use, the City licenses tobacco retail establishments and prohibits establishments from selling tobacco products to persons under the age of 21. (Health Code Articles 19H, 19P). To reduce exposure to secondhand smoke, the City has gone above and beyond state law by prohibiting smoking in facilities owned or leased by the City, polling places, entrances to buildings, sports arenas, farmers markets, and at outdoor dining and events. (Health Code Article 19F). To address the appeal of flavored tobacco

products to youth, the City enacted Ordinance No. 140-17 prohibiting tobacco retail establishments from selling flavored tobacco products. As a result of the referendum process, the ordinance was placed before the voters, who approved the ordinance in June 2018 (Proposition E) by a majority of 68.39%. And since 2008, to signal its refusal to allow City property to be used for activities that contribute to the burden of tobacco use, the City has acted in its proprietary capacity to prohibit the sale of tobacco products on City property.

For many years, the City's tobacco control laws addressed only the sale and use of traditional tobacco products made of tobacco leaf, such as cigarettes, cigars, and smokeless tobacco products. But in 2007, electronic cigarettes (or "e-cigarettes") entered the marketplace, and since 2014, they have been the most commonly used tobacco product among youth in the United States. The widespread use of e-cigarettes by youth has significant public health consequences. As stated by the Surgeon General, "Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs.

In 2014, to address the public health hazards presented by electronic cigarettes, the City enacted Ordinance No. 30-14 prohibiting the sale and use of electronic cigarettes in all places where the sale and use of traditional tobacco products were prohibited. That ordinance failed to expand Article 19K's prohibition on tobacco sales on City property to include the sale of electronic cigarettes.

Since 2014, the problem of youth electronic cigarette use ("vaping") has become an epidemic. According to the Centers for Disease Control and Prevention ("CDC"), the number of middle and high school students who are current users of tobacco products increased from 3.6 million to 4.9 million between 2017 and 2018. This increase – which was driven by a surge in e-cigarette use – erased past progress in reducing youth tobacco product use.

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