

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

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

DATE: March 27, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 190311

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

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

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

2
3 **Ordinance amending the Health Code to prohibit the sale, manufacture, and**
4 **distribution of tobacco products, including electronic cigarettes, on City property.**

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.

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

13 Section 1. Findings.

14 (a) Despite progress in reducing smoking, tobacco use is still the leading cause of
15 preventable death in the United States. Tobacco kills more than 480,000 people in this
16 country annually – more than AIDS, alcohol, car accidents, illegal drugs, murders, and
17 suicides combined. And beyond this impersonal statistic are countless human beings whose
18 lives are forever devastated by the irreparable loss of a loved one caused by tobacco use,
19 and the inevitable rupture of family that follows such a loss. And that is to say nothing of the
20 huge financial costs tobacco use places on our health care system, and the constraints on
21 productivity it imposes on our economic system.

22 (b) The City and County of San Francisco (“City”) has been a leader in local tobacco
23 control policy. To reduce the burden of tobacco use, the City licenses tobacco retail
24 establishments and prohibits establishments from selling tobacco products to persons under
25 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

1 leased by the City, polling places, entrances to buildings, sports arenas, farmers markets, and
2 at outdoor dining and events. (Health Code Article 19F). To address the appeal of flavored
3 tobacco products to youth, the City enacted Ordinance No. 140-17 prohibiting tobacco retail
4 establishments from selling flavored tobacco products. As a result of the referendum process,
5 the ordinance was placed before the voters, who approved the ordinance in June 2018
6 (Proposition E) by a majority of 68.39%. And since 2008, to signal its refusal to allow City
7 property to be used for activities that contribute to the burden of tobacco use, the City has
8 acted in its proprietary capacity to prohibit the sale of tobacco products on City property.

9 (c) For many years, the City's tobacco control laws addressed only the sale and use
10 of traditional tobacco products made of tobacco leaf, such as cigarettes, cigars, and
11 smokeless tobacco products. But in 2007, electronic cigarettes (or "e-cigarettes") entered the
12 marketplace, and since 2014, they have been the most commonly used tobacco product
13 among youth in the United States. The widespread use of e-cigarettes by youth has
14 significant public health consequences. As stated by the Surgeon General, "Most e-cigarettes
15 contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products.
16 Nicotine exposure during adolescence can harm the developing brain – which continues to
17 develop until about age 25. Nicotine exposure during adolescence can impact learning,
18 memory, and attention. Using nicotine in adolescence can also increase risk for future
19 addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from
20 e-cigarettes can potentially expose both themselves and bystanders to other harmful
21 substances, including heavy metals, volatile organic compounds, and ultrafine particles that
22 can be inhaled deeply into the lungs."

23 (d) In 2014, to address the public health hazards presented by electronic cigarettes,
24 the City enacted Ordinance No. 30-14 prohibiting the sale and use of electronic cigarettes in
25 all places where the sale and use of traditional tobacco products were prohibited. That

1 ordinance failed to expand the prohibition on tobacco sales on City property to include the
2 sale of electronic cigarettes.

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

9 (f) To address the growing health epidemic of youth vaping, and reassert its refusal to
10 allow City property to be used for activities that contribute to the burden of tobacco use, it is
11 essential to prohibit the sale, distribution, and manufacture of all tobacco products – including
12 electronic cigarettes – on City property.

13
14 Section 2. Article 19K of the Health Code is hereby amended by revising Sections
15 19K.1, 19K.2, 19K.3, and 19K.4, to read as follows:

16
17 **SEC. 19K.1. DEFINITIONS.**

18 For purposes of this Article 19K, the following terms have the following meanings:

19 “City” means the City and County of San Francisco.

20 “City Property” means real property owned by the City or under the control of the City through
21 a lease or otherwise, including, but not limited to, property under the administrative jurisdiction of the
22 Port Commission, the Municipal Transportation Agency, or the Public Utilities Commission.

23 “Director” means the Director of Health, or the Director’s designee.
24
25

1 "Distribute" or "Distribution" means the transfer, by any Person other than a common carrier,
2 of a Tobacco Product at any point from the place of Manufacture or thereafter to the Person who sells
3 the Tobacco Product to an individual for personal consumption.

4 "Manufacture" means to make, fabricate, assemble, repair, or process a Tobacco Product.

5 (a) "Person" ~~shall mean~~ any individual ~~person~~, firm, partnership, association,
6 corporation, company, organization, or legal entity of any kind.

7 "Sell," "Sale," and "to Sell" mean any transaction where, for any consideration, ownership of
8 a Tobacco Product is transferred from one Person to another, including but not limited to any transfer
9 of title or possession for consideration, exchange, or barter, in any manner or by any means.

10 (b) "Tobacco Product" ~~shall mean any substance containing tobacco leaf, including but not~~
11 ~~limited to cigarettes, cigars, pipe, tobacco, snuff, chewing tobacco, and dipping tobacco.~~ has the
12 meaning set forth in Section 19H.2 of the Health Code.

13 (c) ~~"Director" shall mean the Director of the Department of Public Health or his or her~~
14 ~~designee.~~

15
16 **SEC. 19K.2. PROHIBITION AGAINST TOBACCO PRODUCT SALES,**
17 **MANUFACTURE, AND DISTRIBUTION ON CITY PROPERTY OWNED BY OR UNDER THE**
18 **CONTROL OF THE CITY.**

19 No ~~p~~Person ~~shall may s~~Sell, ~~Manufacture, or Distribute~~ ~~t~~Tobacco ~~p~~Products on ~~City~~
20 ~~p~~Property ~~owned by or under the control of the City and County of San Francisco~~, except as
21 provided in Section 19K.3. All leases, permits, or agreements awarded by the City ~~and County~~
22 ~~of San Francisco~~ allowing any ~~p~~Person to use City ~~p~~Property ~~for retail purposes~~ shall specifically
23 provide that there shall be no ~~s~~Sale, ~~Manufacture, or Distribution~~ of ~~t~~Tobacco ~~p~~Products on such
24 City ~~p~~Property, and such prohibition must be included in all subleases, or other agreements providing
25 for exclusive use of the property.

1
2 **SEC. 19K.3. EXCEPTIONS.**

3 (a) The prohibition against ~~Tobacco Product s~~Sales, Manufacture, and Distribution on
4 City pProperty owned by or controlled by the City in Section 19K.2 shall not apply where its
5 application would impair a lease, permit, or use agreement to which the City is a party and is in
6 effect on the effective date of ~~this~~ ordinance in Board File No. _____ amending this
7 Article 19K. On or after the effective date of that ordinance, ~~The City shall~~ may not enter into,
8 renew, extend, or materially amend a lease, permit, or use agreement for the use of City
9 pProperty after the effective date of this ordinance that does not incorporate the prohibition set
10 forth in Section 19K.2.

11 (b) The prohibition against ~~Tobacco Products~~Sales, Manufacture, and Distribution on
12 property owned by or controlled by the CityCity Property in Section 19K.2 shall not apply to the
13 passenger terminal complex at San Francisco International Airport.

14 (c) The prohibition against Tobacco Product Sales, Manufacture, and Distribution on City
15 Property in Section 19K.2 shall not apply to Persons who are affiliated with an accredited academic
16 institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part
17 of academic research.

18
19 **SEC. 19K.4. PENALTIES AND ENFORCEMENT.**

20 (a) Administrative penalties for violation of the prohibition set forth in Section 19K.2
21 shall be assessed and collected by the Director in accordance with Administrative Code
22 Chapter 100, which is hereby incorporated by reference.

23 (b) The City Attorney may at any time institute civil proceedings for injunctive and monetary
24 relief including civil penalties, against any Person for violations of this Article 19K, without regard to
25 whether the Director has assessed or collected administrative penalties.

1 (c) At any time, the Director may refer a case to the City Attorney's Office for civil
2 enforcement, but a referral is not required for the City Attorney to bring a civil action under subsection
3 (b).

4 (d) Any Person who violates any provision of this Article 19K shall be subject to injunctive
5 relief and a civil penalty in an amount not to exceed \$1,000 for each violation, which penalty shall be
6 assessed and recovered in a civil action brought in the name of the people of the City and County of
7 San Francisco by the City Attorney in any court of competent jurisdiction. In assessing the amount of
8 the civil penalty, the court shall consider any one or more of the relevant circumstances presented by
9 any of the parties to the case, including but not limited to, the following: the nature and seriousness of
10 the misconduct giving rise to the violation, the number of violations, the persistence of the misconduct,
11 the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct,
12 and the defendant's assets, liabilities, and net worth.

13 (e) The City may recover reasonable attorneys' fees and costs for civil actions brought under
14 this Section 19K.4.

15 (f) Remedies under this Section 19K.4 are non-exclusive and cumulative to all other remedies
16 available at law or equity.

17
18 Section 3. Effective Date. This ordinance shall become effective 30 days after
19 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
20 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
21 of Supervisors overrides the Mayor's veto of the ordinance.

22
23 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the "Note" that appears under
3 the official title of the ordinance.
4

5 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
6 of this ordinance, or any application thereof to any person or circumstance, is held to be
7 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
8 shall not affect the validity of the remaining portions or applications of the ordinance. The
9 Board of Supervisors declares that it would have passed this ordinance and each and every
10 section, subsection, sentence, clause, phrase, and word not declared invalid or
11 unconstitutional without regard to whether any other portion of this ordinance or application
12 thereof would be subsequently declared invalid or unconstitutional.
13

14 Section 6. Undertaking for the General Welfare. In enacting and implementing this
15 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
16 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
17 is liable in money damages to any person who claims that such breach proximately caused
18 injury.
19

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

22 By:


23 ANNE PEARSON
24 Deputy City Attorney

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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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Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 MAR 19 11:23
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 [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic 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 the Imperative Form.

Sponsor(s):

Walton

Subject:

Health Code-Restricting Commercial Tobacco Activities on City Property

The text is listed:

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

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only