

File No. 100103

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: City Operations & Neighborhood Ser. Date: April 26, 2010

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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Completed by: Victor Young

Date April 22, 2010

Completed by: Victor Young

Date \_\_\_\_\_

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[Prohibition on Tobacco Sales Within 1,000 Feet of a School]

Ordinance amending the San Francisco Health Code by amending Section 1009.53 and by adding Article 19L, Sections 1010.5 through 1010.11, to prohibit the sale of tobacco within 1,000 feet of any public or private school.

NOTE: Additions are single-underline italics Times New Roman;  
deletions are ~~strike-through italics Times New Roman~~.  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Health Code is hereby amended by amending Section 1009.53, to read as follows:

**SEC. 1009.53. APPLICATION PROCEDURE: INSPECTION OF PREMISES; ISSUANCE AND DISPLAY OF PERMIT.**

(a) Application. An application for a tobacco sales permit shall be submitted in the name of the person(s) proposing to engage in the sale of tobacco products and shall be signed by each person or an authorized agent thereof. The application shall be accompanied by the appropriate fees as described in section 35 of the San Francisco Business and Tax Regulations Code. A separate application is required for each location where tobacco sales are to be conducted. All applications shall be submitted on a form supplied by the Department and shall contain the following information:

1. The name, address, and telephone number of the applicant;
2. The establishment name, address, and telephone number for each location for which a tobacco sales permit is sought;

1           3. Such other information as the Director deems appropriate, including the  
2 applicant's type of business and whether the applicant has previously been issued a permit  
3 under this Article that is, or was at any time, suspended or revoked.

4           (b) Inspection by Director. Upon receipt of a completed application and fees, the  
5 Director may inspect the location at which tobacco sales are to be permitted. The Director  
6 may also ask the applicant to provide additional information that is reasonably related to the  
7 determination whether a permit may issue.

8           (c) Issuance of Permit. If the Director is satisfied that the applicant has met the  
9 requirements of this Article and that issuance of the permit will not violate any law, the  
10 Department shall issue the permit. No permit shall issue if the Director finds that the applicant  
11 is in violation of San Francisco Health Code section 1009.1 (regulating cigarette vending  
12 machines), San Francisco Police Code section 4600.3 (regulating the self-service  
13 merchandising of tobacco products), ~~or~~ if the applicant is a pharmacy prohibited from selling  
14 tobacco products under Article 19J, or if the applicant seeks a new tobacco sales permit for an  
15 establishment located within 1,000 feet of the nearest point of the property line of a public or private  
16 school. No permit shall issue if the application is incomplete or inaccurate.

17           (d) Display of Permit. Each permittee shall display the permit prominently at each  
18 location where tobacco sales occur. No permit that has been suspended shall be displayed  
19 during the period of suspension. A permit that has been revoked is void and may not be  
20 displayed.

21           Section 2. The San Francisco Health Code is hereby amended by adding Article 19L,  
22 Sections 1010.5 through 1010.11, to read as follows:

23                   **ARTICLE 19L: TOBACCO PERMIT PROXIMITY LIMITATION**

24           **SEC. 1010.5. FINDINGS.**

25                   The Board of Supervisors finds and declares the following:

1           1. Tobacco is the leading cause of preventable death in the United States and the leading risk  
2 factor contributing to the burden of disease in the world's high income countries. According to the  
3 Centers for Disease Control and Prevention (CDC), more than 400,000 deaths each year are  
4 attributable to tobacco use, including one-third of all cancer deaths.

5           2. In addition to the health impact, tobacco related death and disease have an economic  
6 impact. The CDC reports that tobacco use accounts for almost \$100 billion in annual health care  
7 costs. In 1999, the California Department of Health Services found that the economic costs of smoking  
8 in California were approximately \$475 per resident or \$3,331 per smoker, for a total of nearly \$15.8  
9 billion in smoking-related costs (1999 dollars). Those same costs in 2008 increase to \$614 per resident  
10 or \$4,310 per smoker for a total of nearly \$20.4 billion dollars. The 2008 dollar figures were  
11 calculated based on the Consumer Price Index from 1999 compared to the Index for 2008.

12           3. Social norms about smoking influence smoking rates, particularly among those not addicted.  
13 Studies have found that strong governmental regulation of smoking corresponds and may contribute to  
14 anti-smoking norms. Social unacceptability has been repeatedly shown to be an important influence on  
15 both initiation and quitting.

16           4. Research in California found a higher prevalence of current smoking at schools  
17 with more tobacco outlets within walking distance. In San Francisco, the proportion of tobacco outlets  
18 within 1000 feet of schools is above 70%. Researchers suggest that limiting the density of tobacco  
19 outlets and their proximity to schools may be effective strategies to reduce youth smoking rates.  
20 Researchers have also found a higher prevalence of the sale of tobacco to minors in both African  
21 American and White low-income urban areas.

22           5. More than one-third (34.6%) of the San Francisco youth surveyed said it was easy to  
23 purchase tobacco in their community.

1           6. In California, 13.3 % of the adult population and 15.4 % of high school students smoke.  
2           Cal. Dep't Health Services, Tobacco Control Sec., 30-Day Smoking Prevalence Among California  
3           Youth (March 2006).

4           7. Although it is unlawful to sell tobacco products to minors, 8.6 % of California retailers  
5           surveyed do sell to minors and 13.2% of San Francisco retailers sold to minors in 2009. Cal. Dep't  
6           Public Health, Tobacco Control Sec., Youth Tobacco Purchase Survey 2009 (survey results are  
7           available at <http://www.cdph.ca.gov/Documents/PH09-85-Tobacco-Sales-to-Minors-2009-Chart.pdf>).  
8           In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimated  
9           924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco  
10           industry \$480 million in profits from underage smokers; Joseph R. DiFranza, MD & John J. Librett,  
11           MPH, State and Federal Revenues from Tobacco Consumed by Minors, 89(7) Am. J. Pub. Health 1106  
12           (July 1999).

13           8. The City and County of San Francisco has a substantial interest in ensuring that any person  
14           selling or exchanging tobacco products should be at least of a legal age to purchase such products.

15           9. The City and County of San Francisco has a substantial interest in promoting compliance  
16           with state laws prohibiting the sales of tobacco products to minors; in promoting compliance with  
17           federal, state and local laws intended to discourage the purchase of tobacco products by minors; and  
18           finally, and most importantly, in protecting children from being lured into illegal activity through the  
19           misconduct of adults.

20           10. A recent study found that 33% of tobacco underage sales took place within 100 feet of a  
21           school. Robert Lipton, Ph.D, The Spatial Distribution of Underage Tobacco Sales and School  
22           Proximity in Los Angeles.

23           11. Local regulations are necessary to control the location and operation of the sale or  
24           exchange of tobacco products for the protection of public health, safety and welfare.  
25

1        12. The City and County of San Francisco intends to restrict the location of tobacco retailers in  
2        the City and County of San Francisco for the protection of public health, safety, and welfare of youth.

3        **SEC. 1010.6. DEFINITIONS.**

4        For the purposes of this Article, the following terms shall have the following meanings, unless  
5        the context requires otherwise:

6        (a) "Application" shall mean the application submitted under Section 1009.53 for a tobacco  
7        sales permit allowing the person or business to engage in the sale of tobacco products at an  
8        establishment.

9        (b) "Director" shall mean the Director of Health or his or her designee.

10       (c) "Establishment" shall mean any store, stand, booth, concession or other enterprise that  
11       engages in the retail sale of tobacco products.

12       (d) "School" shall mean a public or private kindergarten, elementary, middle, junior high or  
13       high school.

14       **SEC. 1010.7. PROHIBITION ON TOBACCO SALES WITHIN 1,000 FEET OF A SCHOOL.**

15       (a) The City may not issue a new tobacco sales permit for any establishment located within  
16       1,000 feet of the nearest point of the property line of a public or private school.

17       b) Establishments operating with a valid tobacco sales permit at a location where sales would  
18       otherwise be prohibited under this Section at the operative date of this ordinance may continue to  
19       operate under the existing permit and ownership of such an establishment may be assumed by a parent,  
20       spouse, domestic partner, sibling or child of the identified permit holder.

21       **SEC. 1010.8. ANNUAL REPORT ON TOBACCO PERMITS.**

22       (a) The Department of Public Health, the Youth Commission and the Small Business  
23       Commission shall jointly evaluate the number of expired tobacco permits that are not renewed and the  
24       number of new permits issued to establishments previously permitted to operate within 1,000 feet of a  
25

1 school. In addition, these agencies shall evaluate the types and numbers of establishments cited for  
2 sales to minors to ensure that the City's enforcement actions are equitable.

3 (b) The findings shall be reported to the Board of Supervisors on an annual basis.

4 **SEC. 1010.9. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

5 The Director may issue and amend rules, regulations, standards, guidelines or conditions to  
6 implement and enforce this Article.

7 **SEC. 1010.10. PREEMPTION.**

8 In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights  
9 or authority of the State to do those things that are required, directed, or expressly authorized by  
10 Federal or State law. This ordinance does not prohibit that which is prohibited by Federal or State law  
11 and this ordinance shall not apply to prohibit conduct that is prohibited by Federal and State law.

12 **SEC. 1010.11. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

13 In undertaking the adoption and enforcement of this Article, the City and County is assuming an  
14 undertaking only to promote the general welfare. The City does not intend to impose the type of  
15 obligation that would allow a person to sue for money damages for an injury that the person claims to  
16 suffer as a result of a City officer or employee taking or failing to take an action with respect to any  
17 matter covered by this Article.

18 **SEC. 1010.12. SEVERABILITY.**


19 If any of the provisions of this Article or the application thereof to any person or circumstance  
20 is held invalid, the remainder of this Article, including the application of such part or provisions to  
21 persons or circumstances other than those to which it is held invalid, shall not be affected thereby and  
22 shall continue in full force and effect. To this end, the provisions of this Article are severable.



1 APPROVED AS TO FORM:

2 DENNIS J. HERRERA, City Attorney

3  
4 By:

  
5 ALEETA M. VAN RUNKLE  
6 Deputy City Attorney  
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## LEGISLATIVE DIGEST

[Prohibition on Tobacco Sales within 1,000 feet of a School.]

**Ordinance amending the San Francisco Health Code by amending Section 1009.53 and by adding Article 19L, Sections 1010.5 through 1010.11, to prohibit the sale of tobacco within 1,000 feet of any public or private school.**

### Existing Law

The San Francisco Health Department issues permits for the sale of tobacco under San Francisco Health Code section 1009.53. Establishments must have a valid permit to sell tobacco products within San Francisco. Existing law does not prohibit the sales of tobacco products based on an establishment's proximity to a school.

### Amendments to Current Law

The proposed ordinance will prohibit the sale of tobacco within 1,000 feet of the property line of any public or private school. "School" shall mean a public or private kindergarten, elementary, middle, junior high or high school. Only applications for new permits for sales of tobacco within 1,000 feet of a school will be denied. Establishments operating with a valid tobacco sales permit at a location where sales would otherwise be prohibited under this Section at the operative date of this ordinance may continue to operate under the existing permit and ownership of such an establishment may be assumed by the parents, spouse, domestic partner, siblings or child of the identified permit holder.

The Department of Public Health, the Youth Commission and the Small Business Commission shall jointly evaluate the number of expired tobacco permits that are not renewed and the number of new permits issued to establishments previously permitted to operate within 1,000 feet of a school. In addition, these agencies shall evaluate the types and numbers of establishments cited for sales to minors to ensure that the City's enforcement actions are equitable. The findings shall be reported to the Board of Supervisors on an annual basis.

### Background Information

Research in California found a higher prevalence of current smoking at schools with more tobacco outlets within walking distance. In San Francisco, the proportion of tobacco outlets within 1000 feet of schools is above 70%. Researchers suggest that limiting the density of tobacco outlets and their proximity to schools may be effective strategies to reduce youth smoking rates. Researchers have also found a higher prevalence of the sale of tobacco to minors in both African American and White low-income urban areas.

More than one-third (34.6%) of the San Francisco youth surveyed said it was easy to purchase tobacco in their community. In California, 13.3 % of the adult population and 15.4 % of high school students smoke. A recent study found that 33% of tobacco underage sales

FILE NO.

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Although it is unlawful to sell tobacco products to minors, 8.6 % of California retailers surveyed do sell to minors and 13.2% of San Francisco retailers sold to minors in 2009. Cal. Dep't Public Health, Tobacco Control Sec., Youth Tobacco Purchase Survey 2009 (survey results are available at <http://www.cdph.ca.gov/Documents/PH09-85-Tobacco-Sales-to-Minors-2009-Chart.pdf>). In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers; Joseph R. DiFranza, MD & John J. Librett, MPH, State and Federal Revenues from Tobacco Consumed by Minors, 89(7) Am. J. Pub. Health 1106 (July 1999).



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
GAVIN NEWSOM, MAYOR

April 15, 2010

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**RE: File No. 100103[Prohibition on Tobacco Sales within 1,000 feet of a School.]**

Ordinance amending the San Francisco Health Code by amending Section 1009.53 and by adding Article 19L, Sections 1010.5 through 1010.11, to prohibit the sale of tobacco within 1,000 feet of any public or private school.

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo:

On March 31, 2010 the Small Business Commission heard and recommended approval to the Board of Supervisors for File No. 100103. Recommendation for approval was made upon the Mayor's acceptance of exemptions for "Tobacco Shops" as defined in Section 1009.21 (u) and "Bars" and "Taverns" as defined in Section 1009.21 (a.) The Commission feels that since these establishments do not cater to or admit minors that exempting these businesses will protect a number of small businesses, while at the same time not negatively impacting the intent of the legislation. The Commission supports the reduction of tobacco sales to minors and finds that the 1,000 foot zone around schools is precedented. The Commission wishes to thank the Mayor's office for working with the Commission to minimize the impact this ordinance will have on small businesses through reasonable exemptions.

According to the Department of Public Health, "Strong tobacco permitting laws coupled with regular enforcement make a big difference in illegal sales." While the Commission supports File No. 100103 as a permitting law policy which will reduce tobacco access to minors, we question whether adequate enforcement is taking place. The Commission asks that the Department of Public Health, with support from the Mayor's office and the Board of Supervisors work to enhance current enforcement programs. Moving forward, the Commission requests that enforcement programs be improved prior to considering new legislative action.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

cc. Starr Terrell  
Victor Young, Clerk of City Operations and Neighborhood Services Committee

SMALL BUSINESS ASSISTANCE CENTER/ SMALL BUSINESS COMMISSION  
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110 SAN FRANCISCO, CALIFORNIA 94102-4681  
(415) 554-6481