[Health, Business and Tax Regulations Codes - Tobacco Sales Permits and Associated Fees]

Ordinance amending the Health Code by adding density, proximity, and sales establishment limitations on the granting of new tobacco sales permits, and renumbering all sections in Article 19H; amending the Business and Tax Regulations Code by increasing the annual license and application fees; and making environmental findings.

NOTE: Unchanged Code text and unmodified 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. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 141098 and is incorporated herein by reference.

Section 2. Article 19H of the Health Code is hereby amended by revising and renumbering (new section numbers in parentheses) Sections 1009.50 (19H.1), 1009.51 (19H.2), 1009.53 (19H.4), 1009.551 (19H.5), 1009.56 (19H.9), 1009.57 (19H.10), 1009.58 (19H.11), 1009.59 (19H.12), 1009.60 (19H.13), 1009.61 (19H.14), 1009.62 (19H.15), 1009.63 (19H.16), 1009.64 (19H.17), 1009.66 (19H.19), 1009.68 (19H.21), and 1009.73 (19H.25); renumbering (new section numbers in parentheses) Sections 1009.52 (19H.3), 1009.54
(19H.7), 1009.55 (19H.8), 1009.65 (19H.18), 1009.67 (19H.20), 1009.69 (19H.22), 1009.71 (19H.23), 1009.72 (19H.24), 1009.74 (19H.26), 1009.75 (19H.27), 1009.76 (19H.28), and 1009.77 (19H.29); and adding Sections 19H.5 and 19H.6, resulting in Sections 19H.1-19H.29, to read as follows:

SEC. 1009.5019H.1. FINDINGS.

The Board of Supervisors of the City and County of San Francisco hereby finds and declares as follows:

(a) Tobacco is the leading cause of preventable death in the United States and kills nearly 6 million people each year globally (World Health Organization 2013). According to the Centers for Disease Control and Prevention (CDC), more than 400,000 deaths in the United States each year are attributable to tobacco use, including one-third of all cancer deaths.

(b) In addition to the obvious adverse health impact, tobacco related death and disease have an adverse economic impact. The CDC reports that tobacco use costs the United States billions of dollars each year.

(c) State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors. (California Penal Code section 308.) State law also prohibits public school students from smoking or using tobacco products while on campus, attending school-sponsored activities, or under the supervision or control of school district employees. (California Education Code section 48901(a).) In addition, state law prohibits smoking in enclosed places of employment. (California Labor Code section 6404.5.) Moreover, San Francisco has adopted ordinances that ban cigarette vending machines in the City (San Francisco Health Code Article 19D section 1009.4), prohibit pharmacy sales of Tobacco Products (San Francisco Health Code Article 19J), prohibit the self-service merchandising of Tobacco Products, except in places to which access by minors is prohibited by law (San Francisco...
Police Code section 4600.3, and prohibit smoking in enclosed areas and sports stadiums (San Francisco Health Code Article 19F section 1009.22) and prohibit the use of electronic cigarettes where smoking is not allowed (Health Code Article 19N).

(d) B. Despite these state and local restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates. 36.8% of California youth have smoked an entire cigarette by age 14 according to a 2012 survey conducted by the California Department of Public Health. The former United States Surgeon General Regina Benjamin at a February 2014 summit emphasized that the key factor in the fight against tobacco is preventing minors from becoming smokers. She noted, “for every smoker who dies, there are two so-called replacement smokers trying a cigarette for the first time and getting hooked.” Children under the age of 18 consume 924 million packs of cigarettes annually in the United States. Over 29 million packs of cigarettes are sold to California children annually. More than 60 percent of all smokers begin smoking by the age of 14, and 90 percent begin by age 19.

C. In a 2002 California youth buying survey, 19.3 percent of retailers surveyed unlawfully sold tobacco products to minors compared to 17.1 percent in 2001.

D. California’s rate of illegal tobacco sales to minors is steadily increasing. In 2002 the rate was 19.3 percent, up from 17.1 percent in 2001, and 12.8 percent in 2000.

(e) Although it is unlawful to sell Tobacco Products and/or tobacco paraphernalia to minors, in a 2013 California youth buying survey, 7.6% of retailers surveyed unlawfully sold Tobacco Products to minors. These percentages are more concerning locally. San Francisco’s Tobacco Sales to minors were reported to be 13.4% of retailers in 2012. Notably, sales in the City to minors are well above the 2012 statewide sales rate of 8.7%. More aggressive policies are needed to keep San Francisco’s youth from gaining access to Tobacco Products.

(f) There are approximately 1,001 outlets in San Francisco that are licensed to sell tobacco, that is about 1 retailer for every 111 youth kids in the community compared to California
generally where there are approximately 36,700 licensed tobacco retail stores in California – one for every 254 youth children. The California Department of Health Services reports that 26.7 percent of California adolescents believe it is easy to buy a pack of cigarettes.

F. Despite active enforcement by the San Francisco Police Department, a significant number of retailers continue to sell tobacco illegally to minors. The rate of illegal tobacco sales documented by the Police Department during 2001 was 25.3 percent and 20.2 percent in 2002.

G. In a youth decoy operation conducted by the Police Department, 50 percent of the 12 bars visited illegally sold tobacco to a minor.

(g) San Francisco has a substantial interest in promoting compliance with State laws prohibiting sales of cigarettes and tobacco products to minors, in promoting compliance with laws intended to discourage the purchase of tobacco products by minors, and in protecting our children from illegally obtained tobacco.

(h) Social norms about smoking influence smoking rates, particularly among those not addicted. Studies have found that strong governmental regulation of smoking corresponds with and may contribute to anti-smoking norms. Social unacceptability has been repeatedly shown to be an important influence on both smoking rates and anti-smoking norms. Children and young people are particularly influenced by cues suggesting smoking is acceptable.

(i) Empirical research connects lower densities of retail outlets with lower consumption of tobacco, particularly among youth. Higher tobacco retail density encourages smoking by making cigarettes more accessible and available, by normalizing tobacco use, and through increasing environmental cues to smoke. Research focused on California has found a higher prevalence of current smoking and experimental smoking among students at schools in areas with a higher density of tobacco outlets. Prevalence of smoking was higher among students at schools in neighborhoods with five or more stores that sell tobacco than among students at schools in neighborhoods without any stores that sell tobacco.
(j) California communities in lower socio-economic areas with a higher concentration of convenience stores have significantly higher rates of smoking. Residents of these neighborhoods are more at risk for tobacco related disease and death. Likewise, San Francisco’s most disadvantaged neighborhoods are disproportionately impacted by high tobacco retail density. The six supervisorial districts with the highest proportions of tobacco retail sales by population (Districts 3, 5, 6, 9, 10, and 11) also have the lowest median household incomes in the City. District Six, with a median household income of $38,610, has 270 tobacco permits while District Two, with a median household income of $102,457, has only 51 tobacco permits. African American and Latino residents are more likely to live in districts with the highest number of tobacco retail outlets.

(k) As the tobacco related public health crisis affects all supervisorial districts in San Francisco, it is in the City’s interest to reduce the disproportionate exposure to tobacco outlets that exists among supervisorial districts and to minimize exposure in all supervisorial districts by limiting the number of new tobacco permits issued. District Seven currently has the lowest number (five) of tobacco permitted retailers per 10,000 residents in San Francisco. Setting a cap slightly above the District Seven density of permitted tobacco retailers as the maximum for each supervisorial district will begin to address the disparity of exposure to tobacco outlets among supervisorial districts and reduce the density of tobacco vendors overall.

(l) San Franciscans support limiting and reducing the number of permits for the sale of tobacco. In a 2012 representative survey of over 220 San Francisco residents, 88.5% felt that too many stores selling cigarettes is bad for community health; almost 74% would support a law that very gradually reduces the number of stores selling cigarettes and Tobacco Products given that the highest density of these is in low income neighborhoods; and 87% would support a policy that would reduce the amount of Tobacco Products available.

(m) Restaurants, and other non-traditional tobacco retailers in California are more likely to sell tobacco to minors than other retailers. 13.1% percent of restaurants and other...
nontraditional retailers sold tobacco to minors compared to 8.7% of all other California
retailers had the highest illegal sale rate to minors, 20.3% or higher on average and nearly
three-times higher than traditional tobacco retailers.

(n) Young adult Bar patrons in one California study reported a current smoking rate of 47
percent, nearly four times the 2010 state rate of smoking prevalence for young adults.

(o) Social environments such as Bars and clubs are important venues for public health efforts
to address young adult smoking.

(p) This Article is designed to promote the public interest in ensuring that San
Francisco businesses operate in compliance with applicable laws regulating tobacco,
including laws prohibiting the sale of tobacco to minors and laws regulating smoking.

I. Requiring tobacco vendors to obtain a tobacco sales permit will not unduly burden
legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to
adults. It will, however, allow the City to regulate those establishments selling tobacco products to
ensure that they comply with federal, state, and local tobacco laws.

SEC. 19H.2. DEFINITIONS.
The following words and phrases, whenever used in this Article, shall be construed as
defined in this section. Words in the singular include the plural and words in the plural include
the singular. Words in the present tense include the future.

"Application" means the application submitted under Section 19H.4 for a Tobacco Sales permit
allowing the person or business to engage in the sale of tobacco products at an Establishment.

“Bar” means an area, whether a separate, stand-alone business or part of a larger business
which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and
in which the serving of food is incidental to the consumption of such beverages.
"Cap" means the figure set forth in Section 19H.5 and represents the total number of permitted Establishments that may operate in each supervisorial district.

"Change of Ownership" means a change of 50 percent or more of the ownership of the business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer of 25 percent of the stock ownership of the permittee shall be deemed to be a Change of Ownership.

"Density Cap" has the same meaning as "Cap."

(a) "Department" means the Department of Public Health.

(b) "Director" means the Director of Health or his or her designee.

"District Population" means the population reported by the Department of Elections in each of the 11 supervisorial districts as required by Charter Section 13.110.

(c) "Establishment" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of tobacco products, and including stores engaging in the retail sale of food items.

(d) "Permittee" means a person who has obtained a tobacco sales permit for a specific location pursuant to this Article.

(e) "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

"Restaurant" means a retail food Establishment that primarily stores, packages, serves, vends, or otherwise prepares food for human consumption on the premises. "Restaurant" includes, but is not limited to businesses primarily engaged in providing (1) food services to patrons who order and are served while seated on the premises, and pay after eating, and (2) food services where patrons generally order and pay before eating on the premises, or (3) take-out food services where patrons order ready-to-eat food generally intended for consumption off the premises. "Restaurant" also includes separately owned food facilities that are located in a grocery store but does not include the grocery store.
"School" means a public or private kindergarten, elementary, middle, junior high or high school, or a school combining some or all of the above school grades.

"Tobacco Products" means tobacco and any substance containing tobacco leaf, including but not limited to cigarettes, *electronic cigarettes*, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco, including the cigarettes commonly known as bidis.

"Tobacco Sales" means sales, or any offer to sell or exchange, for any form of consideration, *Tobacco Products* to any person by any person who operates an establishment. "Tobacco Sales" includes any display of *Tobacco Products*.

"Tobacco Shop" means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia.

SEC. 1009.5219H.3. REQUIREMENT FOR TOBACCO SALES PERMIT.

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SEC. 19H.41009.53. 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 and such fees shall include any required inspections or other work performed by the Planning Department as required by the referral of the application. 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, email address, and telephone number of the Applicant;

2. The Establishment name, address, email address, and telephone number for each location for which a Tobacco Sales permit is sought;

3. Such other information as the Director deems appropriate, including the Applicant’s type of business, and whether the Applicant has previously been issued a permit under this Article that is, or was at any time, suspended or revoked. No permit shall be issued if the Application is incomplete or inaccurate.

(b) Inspection by Director. Upon receipt of a completed Application and fees, the Director may inspect the location at which Tobacco Sales are to be permitted. The Director may also ask the Applicant to provide additional information that is reasonably related to the determination whether a permit may issue.

(c) Referral to the Planning Department. The Director will then refer the Applications requiring inspection as to proximity to Schools and existing Establishments to the Planning Department. The Planning Department upon referral shall analyze the Application against the most recent data provided by the Department to determine whether the Applicant’s location will comply with subsections (f)(3) and (f)(4) and whether the location qualifies as a Tobacco Shop.

(d) (e) Issuance of Permit. If the Director is satisfied that the Applicant has met the requirements of this Article and that issuance of the permit will not violate any law, the Department shall issue the permit. An Establishment may not sell Tobacco Products until the permit is issued. No permit shall issue if the Director finds that the Applicant is in violation of San Francisco Health Code section 1009.1 (regulating cigarette vending machines), San Francisco Police Code...
section 4600.3 (regulating the self-service merchandising of tobacco products), if the Applicant is a pharmacy prohibited from selling tobacco products under Article 19J. No permit shall issue if the Application is incomplete or inaccurate.

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

(f) Grounds for Denial.

(1) No new permit shall be issued if the Director finds that the Applicant is in violation of Health Code Article 19; Police Code Section 4600.3 (regulating the self-service merchandising of tobacco products), or the California Labor Code.

(2) No new permit shall be issued if the Applicant does not have a valid current Tobacco Retail Permit from the State Board of Equalization where the Applicant is required to have the State Board of Equalization permit except for businesses selling only electronic cigarettes.

(3) No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a School as measured by a straight line from the nearest point of the property line on which a School is located to the nearest point of the property line on which the Applicant’s Establishment will be located.

(4) No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing Establishment as measured by a straight line from the nearest point of the property line on which the Applicant’s Establishment will be located to the nearest point of the property line of the existing Establishment.

(5) No new permit shall be issued in any supervisory district that has 45 or more Establishments with Tobacco Sales permits.
(6) No new permit shall be issued to any Applicant whose main purpose is offering food or alcoholic beverages for sale for consumption on the premises, including Bars and Restaurants.

(7) No new permit shall be issued to any Applicant for operation of a Tobacco Shop.

(8) No new permit shall be issued for a location not previously occupied by a permitted Establishment.

(g) Pending Applications. Applications that have been submitted to the Director for approval as of December 9, 2014 shall not be subject to the Section 19H.4(f)(2)-19H.4(f)(8) and Section 19H.5.

SEC. 19H.5 DENSITY CAP

(a) The Density Cap shall be forty-five (45) permitted Tobacco Sales Establishments in a supervisorial district. The Department shall assess the Density Cap every two years to evaluate whether to recommend to the Board of Supervisors an amendment to this Article to change the number of permitted Establishments as reasonably necessary to advance the public health purposes this Article seeks to achieve. The City may not issue a new permit in any supervisorial district that is at or above the Density Cap at the time of submission of the Application.

(b) Pursuant to its authority under Section 19H.26 to adopt rules, the Department may adopt rules governing the approval process for application submitted in a supervisorial district where the number of permits has fallen below the cap, including rules on the timing for the approval process.

SEC. 19H.6. EXCEPTIONS FOR CERTAIN NEW PERMITS. INTERIM EXCEPTION FOR NEW PERMITS WHERE SALE OF THE ESTABLISHMENT IS PENDING.

Notwithstanding Section 19H.5 and Sections 19H.4(f)(3),(4),(5) and (7):
(a) If an owner of a retail food store establishment as defined in the Planning Code or Tobacco Shop who holds a Tobacco Sales permit and has been in business for five years as of the effective date of this Section 19H.6, submits an affidavit to the Director that attests to ownership of the business at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit and that also states that the owner is in negotiations with a specific buyer for the retail food store establishment or Tobacco Shop at that location, then that buyer ("new buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the new buyer for the retail food store establishment or Tobacco Shop at that location, on a one-time basis.

(b) If the new buyer submits an affidavit to the Director, stating that the new buyer has been in business continuously as a retail food store establishment or Tobacco Shop at that same location under the Tobacco Sales permit obtained in accordance with subsection (a) and also states that the new buyer has held the permit for at least 10 years, then a subsequent buyer of the retail food store establishment or Tobacco Shop at that location ("subsequent buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the subsequent buyer for the retail food store establishment or Tobacco Shop on a one-time basis.

(c) Where the owner of a retail food store establishment or Tobacco Shop that holds a Tobacco Sales permit as of the effective date of this Section 19H.6, a child of the owner may apply for, and the Director may issue, a Tobacco Sales permit to the child for that retail food store establishment or Tobacco Shop at that location.

(d) An owner of a retail food store establishment or Tobacco Shop holding a Tobacco Sales permit as of the effective date of this Section 19H.6, who must relocate under Chapter 34B of the Building Code may apply for, and the Director may issue, a new Tobacco Sales permit for the location of the owner’s retail food store establishment or Tobacco Shop.
(e) An owner of a Bar or Tavern (cigar or smoking bar) who qualified for an exemption under Section 1009.23(d) of this Code who holds a Tobacco Sales permit and has been in business for five years as of the effective date of this Section 19H.6, who submits an affidavit to the Director that attests to ownership of the business at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit and that also states that the owner is in negotiations with a specific buyer for the Cigar or Smoking Bar at that location, then that buyer ("new buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the new buyer for the Cigar or Smoking Bar at that location, on a one-time basis.

(f) If the new buyer submits an affidavit to the Director, stating that the new buyer has been in business continuously as a Cigar or Smoking Bar at that same location under the Tobacco Sales permit obtained in accordance with subsection (a) and also states that the new buyer has held the permit for at least 10 years, then a subsequent buyer of the Cigar or Smoking Bar at that location ("subsequent buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the subsequent buyer for the Cigar or Smoking Bar on a one-time basis.

(g) If a spouse or domestic partner acquires the ownership of an Establishment through the death of, or divorce from the owner identified on the permit and submits an affidavit to the Director attesting to the acquisition of the Establishment accompanied by any documentation requested by the Director, the Director may issue a Tobacco Sales permit to the Applicant spouse or domestic partner on a one-time basis.

Applications submitted under Section 19H.4 on or before September 1, 2014 for a new permit subject to Section 19H.5 where an Establishment has held a permit to sell Tobacco Products for or more years at the location subject to the sale if the Establishment submits an affidavit to
accompany the Application stating that no change of ownership has occurred within the prior
seven years and that the current permit holder had been in contract with a buyer of the
Establishment as of September 1, 2014.

SEC. 19H.71009.54. PERMIT AND ANNUAL LICENSE FEES.
(a) The Department shall charge every applicant for a tobacco sales permit a non-
refundable application fee for the initial inspection and processing of the application and an
annual license fee sufficient to cover the costs of annual inspections, as determined by the
Director. The application and processing fee shall be $53 and is covered by Section 35 of
the San Francisco Business and Tax Regulations Code. The annual fee is listed in Section
249.16 of the San Francisco Business and Tax Regulations Code. The Fee shall be due
annually on March 31 of each year, pursuant to Section 76.1, Article 2 of the San Francisco
Business and Tax Regulations Code.

SEC. 19H.81009.55. PERMIT MAY NOT BE TRANSFERRED TO NEW PERSONS OR
LOCATIONS.

SEC. 19H.91009.56. ENFORCEMENT AND INSPECTION.
The Director may enforce all provisions of this Article. Specific grounds for
enforcement are set forth in sections 19H.101009.57 through 19H.181009.65. Upon presentation
of proper credentials, the Director may enter and inspect at any time during regular business
hours any establishment that is engaging in tobacco sales, or is suspected by the Director
of engaging in such sales.
SEC. 19H.101009.57. CONDUCT VIOLATING SAN FRANCISCO HEALTH CODE

ARTICLE 19DSECTION 1009.1 (REGULATING CIGARETTE VENDING MACHINES).

(a) Upon a decision by the Director that the permittee or the permittee’s agent or employee has engaged in any conduct that violates San Francisco Health Code Article 19Dsection 1009.1 (regulating cigarette vending machines), the Director may suspend a Tobacco sales permit as set forth in section 19H.191009.66, impose administrative penalties as set forth in section 19H.201009.67, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under section 19H.211009.68 of this Article or a notice of initial determination under section 19H.221009.69 of this Article.

SEC. 19H.111009.58. CONDUCT VIOLATING SAN FRANCISCO POLICE CODE

SECTION 4600.3 (REGULATING THE SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS).

(a) Upon a decision by the Director that the permittee or the permittee’s agent or employee has engaged in any conduct that violates San Francisco Police Code section 4600.3 (regulating the self-service merchandising of tobacco products), the Director may suspend a Tobacco sales permit as set forth in section 19H.191009.66, impose administrative penalties as set forth in section 19H.201009.67, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under section 19H.211009.68 of this Article or a notice of initial determination under section 19H.221009.69 of this Article.
SEC. 19H.121009.59. CONDUCT VIOLATING SAN FRANCISCO HEALTH CODE

ARTICLE 19F. SECTION 1009.22 (PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS).

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates San Francisco Health Code Article 19F section 1009.22 (prohibiting smoking in enclosed areas and sports stadiums), the Director may suspend a tobacco sales permit as set forth in section 19H.191009.66, impose administrative penalties as set forth in section 19H.201009.67, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under section 19H.211009.68 of this Article or a notice of initial determination under section 19H.221009.69 of this Article.

SEC. 19H.131009.60. CONDUCT VIOLATING TOBACCO CONTROL LAWS.

(a) If the Director decides that the permittee or the permittee's agent or employee has engaged in any conduct that violates local, state, or federal law applicable to tobacco products or tobacco sales, including Administrative Code Chapter 105 (imposing Cigarette Litter Abatement Fee), the Director may suspend a tobacco sales permit as set forth in section 19H.191009.66, impose administrative penalties as set forth in section 19H.201009.67, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under section 19H.211009.68 of this Article or a notice of initial determination under section 19H.221009.69 of this Article.

SEC. 19H.141009.61. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION 308 (PROHIBITING THE SALE OF TOBACCO TO MINORS).
(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates California Penal Code section 308 (prohibiting the sale of tobacco to minors), the Director may suspend a tobacco sales permit as set forth in section 19H.191009.66.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 19H.221009.69 of this Article.

SEC. 19H.151009.62. CONDUCT VIOLATING CALIFORNIA LABOR CODE SECTION 6404.5 (PROHIBITING SMOKING IN ENCLOSED PLACES OF EMPLOYMENT).

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment), the Director may suspend a tobacco sales permit as set forth in section 19H.191009.66.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 19H.221009.69 of this Article.

SEC. 19H.161009.63. FRAUDULENT PERMIT APPLICATIONS.

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has obtained tobacco sales permit from the Department by fraudulent or willful misrepresentation, the Director may suspend a tobacco sales permit as set forth in section 19H.191009.66.

(b) Upon a final decision by the Director that the permittee or the permittee's agent or employee has obtained a tobacco sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties as set forth in section 19H.201009.67.
Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may revoke a Tobacco Sales permit.

Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties in addition to either suspending or revoking the Tobacco Sales permit.

The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 19H.224009.69 of this Article.

Any person who obtained a permit by fraud or misrepresentation may be prosecuted for either an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year.

SEC. 19H.174009.64 SELLING TOBACCO WITHOUT A PERMIT.

Upon a final decision by the Director that any person has engaged in the sale of tobacco at any Establishment without a permit, the Director may impose administrative penalties as set forth in section 19H.204009.67.

The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 19H.224009.69 of this Article. This Notice of Initial Determination may require that all tobacco sales cease and may impose an administrative penalty.

The City Attorney may maintain an action for injunction to restrain any person from selling tobacco without a valid tobacco sales permit. In any such action, the City Attorney may seek civil penalties and may seek a judicial determination that a person must
pay any administrative penalties. The person against whom an injunction issues also shall be
liable for the costs and attorney’s fees incurred by the City and County of San Francisco in
bringing a civil action to enforce the provisions of the section.
(d) Any person who engages in tobacco sales without the required permit may
be prosecuted for either an infraction or a misdemeanor punishable by a fine not to exceed
one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second
violation within one year, and five hundred dollars ($500) for a third and for each subsequent
violation within one year.

SEC. 19H.181009.65. OTHER ENFORCEMENT.
* * * *
SEC. 19H.191009.66 TIME PERIOD OF SUSPENSION OF PERMIT.
When this Article allows the Director to suspend a permit, the following sanctions may
be imposed:
(a) The Director may suspend the permit for a maximum of 90 days for the first
violation.
(b) If a second violation occurs within twelve months of the first violation, the
Director may suspend the permit for a maximum of six months.
(c) Upon the third violation, and each subsequent violation, if within twelve months
of the prior violation, the Director may suspend the permit for a maximum of one year.
(d) Each suspension is an independent sanction and is served consecutively.

SEC. 19H.201009.67. ADMINISTRATIVE PENALTY.
* * * *
SEC. 19H.211009.68. NOTICE OF CORRECTION.
When the Director commences an enforcement action with a notice of correction, the Director shall serve the notice on the permittee or the permittee’s agent. The notice shall state that the Department has determined that a violation may have occurred and that reasonable grounds exist to support this determination. The notice may require corrective action immediately or upon a schedule required by the Director. The Director may require the permittee to post the notice of correction at the location where the Department alleges that violations have occurred. If the permittee fails to obey a notice of correction, the Director may serve a notice of initial determination in accordance with section 19H.221009.69 of this Article.

SEC. 19H.221009.69. NOTICE OF INITIAL DETERMINATION.

SEC. 19H.231009.71. PAYMENT OF ADMINISTRATIVE PENALTIES.

SEC. 19H.241009.72. APPEALS TO BOARD OF APPEALS.

SEC. 19H.251009.73. OTHER REMEDIES.

Nothing in this Article shall affect any other remedies which are available to the City and County under any law, including (1) San Francisco Health Code Article 19D section 1009.1 (regulating cigarette vending machines); (2) San Francisco Police Code section 4600.3 (regulating the self-service merchandising of tobacco products); (3) San Francisco Health Code Article 19F section 1009.22 (prohibiting smoking in enclosed areas and sports stadiums); (4) California Penal Code section 308 (regulating sales of tobacco products to minors); and (5) California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment).
SEC. 19H.261009.74. AUTHORITY TO ADOPT RULES AND REGULATIONS.

SEC. 19H.271009.75. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL WELFARE.

SEC. 19H.281009.76. PREEMPTION.

SEC. 19H.291009.77. SEVERABILITY.

Section 3. The Business and Tax Regulations Code is hereby amended by revising Section 249.16, to read as follows:

SEC. 249.16. TOBACCO LICENSE PERMIT FEE.

Every person, firm or corporation engaged in tobacco sales shall pay an annual license fee of $188 to $200 to the Tax Collector. The amount of the fee shall be determined and published annually by the Department of Health based on the initial amount of $188 set in Ordinance 149-08 and adjusted thereafter under Section 76.1(c) of the Business and Tax Regulations Code. The license fee set forth in this Section shall be paid annually on or before March 31, in accordance with the provisions of Section 76.1 of the Business and Tax Regulations Code.

Section 4. 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.
Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

Section 6. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

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

By:
ALEETA M. VAN RUNKLE
Deputy City Attorney

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