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

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-underline 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. Findings.

(a) 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. And beyond this impersonal statistic are countless human beings whose lives are forever devastated by the irreparable loss of a loved one caused by tobacco use, and the inevitable rupture of family that follows such a loss. And that is to say nothing of the huge financial costs tobacco use places on our health care system, and the constraints on productivity it imposes on our economic system.

(b) 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.

(c) 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 addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs."

(d) 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 the prohibition on tobacco sales on City property to include the
sale of electronic cigarettes.

(e) 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.

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

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

SEC. 19K.1. DEFINITIONS.

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

"City" means the City and County of San Francisco.

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

"Director" means the Director of Health, or the Director's designee.
“Distribute” or “Distribution” means the transfer, by any Person other than a common carrier, of a Tobacco Product at any point from the place of Manufacture or thereafter to the Person who sells the Tobacco Product to an individual for personal consumption.

“Manufacture” means to make, fabricate, assemble, repair, or process a Tobacco Product.

(a) “Person” shall mean any individual, firm, partnership, association, corporation, company, organization, or legal entity of any kind.

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

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

(e) “Director” shall mean the Director of the Department of Public Health or his or her designee.

SEC. 19K.2. PROHIBITION AGAINST TOBACCO PRODUCT SALES.

MANUFACTURE, AND DISTRIBUTION ON CITY PROPERTY OWNED BY OR UNDER THE CONTROL OF THE CITY.

No Person shall may sell, Manufacture, or Distribute Tobacco Products on City property owned by or under the control of the City and County of San Francisco, except as provided in Section 19K.3. All leases, permits, or agreements awarded by the City and County of San Francisco allowing any Person to use City property for retail purposes shall specifically provide that there shall be no sale, Manufacture, or Distribution of Tobacco Products on such City property, and such prohibition must be included in all subleases, or other agreements providing for exclusive use of the property.
SEC. 19K.3. EXCEPTIONS.

(a) The prohibition against Tobacco Product Sales, Manufacture, and Distribution on City Property owned by or controlled by the City in Section 19K.2 shall not apply where its application would impair a lease, permit, or use agreement to which the City is a party and is in effect on the effective date of this ordinance in Board File No. 190311 amending this Article 19K. On or after the effective date of that ordinance, the City shall not enter into, renew, extend, or materially amend a lease, permit, or use agreement for the use of City Property after the effective date of this ordinance that does not incorporate the prohibition set forth in Section 19K.2.

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

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

SEC. 19K.4. PENALTIES AND ENFORCEMENT.

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

(b) The City Attorney may at any time institute civil proceedings for injunctive and monetary relief including civil penalties, against any Person for violations of this Article 19K, without regard to whether the Director has assessed or collected administrative penalties.
(c) At any time, the Director may refer a case to the City Attorney's Office for civil enforcement, but a referral is not required for the City Attorney to bring a civil action under subsection (b).

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

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

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

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.

Section 4. 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 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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

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

By: ANNE PEARSON
Deputy City Attorney
City and County of San Francisco

Tails

Ordinance

File Number: 190311  Date Passed: June 25, 2019

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

June 07, 2019 Public Safety and Neighborhood Services Committee - RECOMMENDED

June 18, 2019 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

June 25, 2019 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Brown, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

Absent: 1 - Fewer

File No. 190311  I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
6/25/2019 by the Board of Supervisors of
the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

Date Approved

6/25/19