



Rules and Regulations for the Retail Tobacco Permit Program Article 19H of the San Francisco Health Code
August 12, 2015

Summary

On December 19, 2014, the San Francisco Board of Supervisors amended Article 19H of the San Francisco Health Code to cap the number of tobacco sales permits to 45 per supervisorial district effective as of January 18, 2015.

Subject to certain limited exceptions, **no New Permits for the sale of tobacco products, including e-cigarettes as defined in 19(N), will be issued for an establishment where the proposed location will be:**

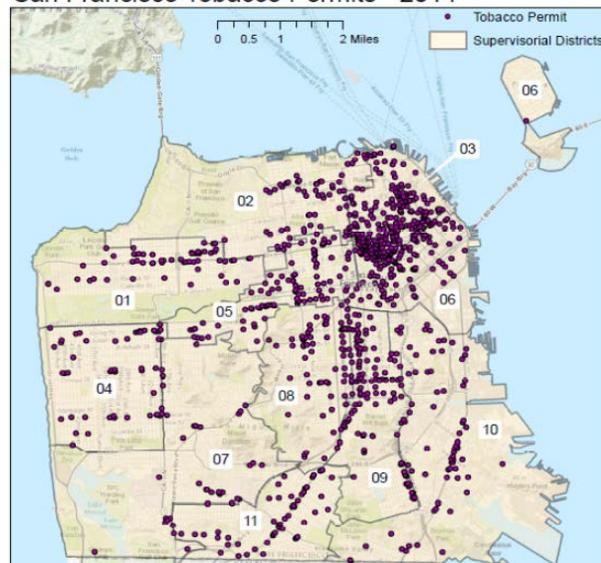
- 1- **in a supervisorial district that already has 45 or more establishments that hold Valid Tobacco Sales Permits;**
- 2- **within 500 feet of a school;**
- 3- **within 500 feet of another business that holds a Valid Tobacco Sales Permit;**
- 4- **a restaurant, bar or tobacco shop, or any establishment without an existing Valid Tobacco Sales Permit;**
- 5- **in a site not previously occupied by a business that held a Valid Tobacco Sales Permit.**

The law does not affect annual permit renewals where payment of the annual renewal fee is made in a timely way. After a permit is closed or cancelled by San Francisco Department of Public Health (Department) or the Tax Collector (e.g. for non-payment of fees) or the permit holder, a New Tobacco Sales Permit would need to be applied for under 19(H).

The amendments require assessment of the tobacco density cap every two years. For 2015-2017, the density cap is 45, and the Department has determined that **only Supervisorial District 7 (Inner Sunset) is below the density cap.**

Tobacco retail permits may be available for issue in District 7 until the cap is reached, as long as the new location meets the other requirements of 19H and all other local, state, and federal laws.

San Francisco Tobacco Permits - 2014



Rules and Regulations

1. Definitions

Article 19H as amended refers to the original owner and subsequent owners.

Original Owner: is an individual or entity who owns the establishment and is the holder of the tobacco permit on January 18, 2015.

New Owner A: is an individual or entity who is purchasing or acquiring the establishment from the Original Owner and is seeking to obtain a permit to continue the sales of tobacco at that location.

Subsequent Buyer B: is an individual or entity who is purchasing or acquiring the establishment from the New Owner A.

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. How this definition applies in various situations is described below.

Definitions of the types of permits that may be issued under 19H.

New Tobacco Sales Permit: is a permit issued after a change of ownership.

Amended Permit: is where an existing permit is amended to add or remove owners from a business where the original owner remains identified on the permit when a business entity's type or structure changes in a manner that does not meet the definition of Change of Ownership; or to change contact information associated with the permit such as mailing address, email or phone number; or when a relocation is required under Chapter 34B of the San Francisco Building Code; or when a spouse or domestic partner is acquiring ownership through the death or divorce.

Annual renewal: is a permit issued upon payment of the annual license renewal fees to the Tax Collector.

Valid Tobacco Sales Permit: is a permit that is not delinquent and has not been inactive for more than 180 days that was issued by SFDPH to an individual or entity for the sales of tobacco in San Francisco.

Definitions of the Forms of Business Types or Structures Referenced in Article 19H.:

Sole Proprietor: is a person who owns the business and is personally responsible for its debts

Partnership: includes general partnerships, limited partnerships and limited liability partnerships.

Corporation: includes c corporations, s corporations, limited liability corporations and cooperatives.

Retail Food Store establishment: is a General Grocery or Specialty Grocery as defined in Sections 790.102 of the San Francisco Planning Code (see Attachment B).

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. At the Director's discretion, retailers whose principal business is selling pipes only shall generally **not** be considered to meet the definition of a Tobacco Shop and shall generally **not** be required to obtain a tobacco sales permit.

2. **Applying for a New or Amended Tobacco Sales Permit**

Businesses engaging in the retail sale, delivery, or furnishing of tobacco, tobacco paraphernalia and e-cigarettes from one person to another in San Francisco require a permit. This permit must be renewed annually with an annual permit fee.

All changes of business, corporate or partnership structure, including adding or removing partners, changing stock ownership percentages, and changes to a permittee's address, email, phone or other contact information must be reported to the Department in writing by email (EnvHealth.DPH@sfdph.org) or letter (SFDPH Retail Tobacco Program, 1390 Market Street, Suite 210, San Francisco, CA 94102) **within 30 days of such change**.

Upon receipt of an application for a New Tobacco Sales Permit or an Amended Permit, the Department shall first verify whether the application qualifies as a Change of Ownership requiring a New Tobacco Sales Permit (see Section 4) or whether an Amended Permit will be issued (see Section 5). New Tobacco Sales Permits may be eligible for certain of the one-time exceptions in 19H.6. Amended Permits will not be subject to the detailed evaluation required for the issuance of a New Tobacco Sales Permit.

All forms of Businesses shall require a permit from the State Board of Equalization, which is intended to insure the proper collection of tobacco taxes. Mobile tobacco sales are prohibited in California.

Application Form

To apply for a New or Amended Tobacco Sales Permit, an Application Packet must be

submitted with the applicable application fee as shown on the sfdph.org fee schedule. The Application Packet shall include:

- Primary application form
- Labor Law Checklist for SF Business Owners
- Declaration of Healthy and Safe Working Conditions
- Workers' Compensation Declaration form
- Any additional materials to ensure compliance with the requirements of the 2015 amendments to Article 19H

Application Fee

New or Amended Permit applications must be accompanied by a check for the Permit Fee payable to the San Francisco Department of Public Health. The Permit Fee is non-refundable. An updated fee list shall be maintained on the Department's website at www.sfdph.org/dph/EH/Fees.asp

3. Application Assessment

No New Permits for the sale of tobacco, including e-cigarettes as defined in 19(N), will be issued for an establishment where:

- the total number of existing permits in the Supervisorial District exceeds 45.
- the location will be within 500 feet of a school.
- the location will be within 500 feet of another location that is permitted to sell tobacco under 19H.
- Restaurants, bars or tobacco shops, or any establishment not currently holding a Valid Tobacco Sales Permit for the sale of tobacco products.
- The location was not previously occupied by a permitted Establishment.

4. New Tobacco Sales Permit and One-time Exceptions

Applications for a New Tobacco Sales Permit will only be granted if the conditions in 19H.4(f) and 19H.5(a) are satisfied OR if one of the exceptions noted in 19H.6 is met. Section 19H.6 allows for certain exceptions where a New Tobacco Sales Permit may be issued even if the cap has been exceeded or if the location requirements are not satisfied.

New Owner A or Subsequent Buyer B may be issued a New Tobacco Sales Permit as long as neither they nor the Permittee from whom they are acquiring ownership is not 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; have a valid current Tobacco Retail Permit from the State Board of Equalization if required; and

4.1. For a Retail Food Store establishment or Tobacco Shop, one of the following:

The exceptions described in 19H.6(a), 19H.6(b), 19H.6(c) and 19H.6(d) apply only to Retail Food Store establishments and Tobacco Shops

An affidavit (Attachment C) attesting that the Original Owner was in business continuously as a Retail Food Store establishment or Tobacco Shop between January 18, 2010 and January 18, 2015 at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit, and specifically names the New Owner A; or

An affidavit (Attachment C) attesting that New Owner A has been in business continuously as a Retail Food Store establishment or Tobacco Shop at that same location under the Tobacco Sales permit obtained after January 18, 2015 at the same location and under the same Tobacco Sales permit for 10 (ten) consecutive years immediately preceding submission of the affidavit, and specifically names the Subsequent Buyer B; or

An affidavit (Attachment C) attesting that the Original Owner on January 18, 2015 would like to make a sale or transfer of ownership to a New Owner A who is son or daughter of the Original Owner, except if that Original Owner is a corporation owned by two or more stockholders or a partnership owned by two or more individuals.

4.2 For a cigar or smoking bar, one of the following:

The exceptions described in 19H.6(e), and 19H.6(f) apply only to a cigar or smoking bar who qualified for an exemption under Section 1009.23(d) of Chapter 19H

An affidavit (Attachment C) attesting that the Original Owner of a Bar or Tavern (cigar or smoking bar) who qualified for an exemption under Section 1009.23(d) of Chapter 19H was in business continuously as between January 18, 2010 and January 18, 2015 at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit, and specifically names the New Owner A; or

An affidavit (Attachment C) attesting that New Owner A has been in business continuously as a Bar or Tavern (cigar or smoking bar) who qualified for an exemption under Section 1009.23(d) of Chapter 19H under the Tobacco Sales permit obtained after January 18, 2015 at the same location and under the same Tobacco Sales permit for 10 (ten) consecutive years immediately preceding submission of the affidavit, and specifically names the Subsequent Buyer B.

5. Amended Permits

The Department may modify and amend the Tobacco Retail permit for changes to ownership that do not meet the definition of Change of Ownership in 19H.2 and as clarified in these rules and regulations without considering certain of the grounds for denial under 19H.4(f) and 19H.5(a). When an Amended Permit is issued, the status of the Permittee as an Original Owner, a New Buyer, or a Subsequent Buyer will not be changed.

- 5.1 **Relocation:** An affidavit (Attachment C) attesting that the Original Owner on January 18, 2015 must relocate under Chapter 34B of the Building Code. For Amended Tobacco Sales Permits issued for relocation, the

Refer to Attachment A for clarifying Examples for Change of Ownership scenarios where the Department may and may not issue an Amended Permit.

Original Owner will maintain their status as Original Owner.

- 5.2 **Death or divorce:** An **Amended Tobacco Sales Permit** may be issued upon **death or divorce** notwithstanding certain of the grounds for denial as listed in 19H.4(f) or 19H.5 after consideration of supplemental information to verify that:

The Permittee was not 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; and

The Permittee had a valid current Tobacco Retail Permit from the State Board of Equalization if required; and

The Application for a Tobacco Sales Permit is being submitted by a spouse or domestic partner who has acquired the ownership through the death of or divorce from the Permittee.

For Amended Tobacco Sales Permits issued for death or divorce, the Permittee will maintain the status of Original Owner, New Owner or Subsequent Buyer that was held by the previous Permittee.

The exception described in 19H.6(g), applies to all establishments with a Valid Tobacco Sales Permit in the event of **death or divorce** from an Original Owner, New Buyer A, or Subsequent Buyer B.

6. **Annual renewals**

The tax collector will bill an annual fee each year. The business must pay in a timely way to keep the Tobacco Retail Permit active

All changes of business, corporate or partnership structure, including adding or removing partners, changing stock ownership percentages, and changes to a permittee's address, email, phone or other contact information must be reported to the Department in writing by email (EnvHealth.DPH@sfdph.org) or letter (SFDPH Retail Tobacco Program, 1390 Market Street, Suite 210, San Francisco, CA 94102) within 30 days of such change.

7. **Number of Tobacco Retail Permits**

The Department shall track active permit numbers in each supervisorial district and annually publish a table that shows the number of active Tobacco Retail permits in each supervisorial district.

8. **Violations of permit terms**

The Department shall collaborate with the San Francisco Police Department to implement decoy operations to ensure compliance with the state and local laws prohibiting sales of tobacco products, including e-cigarettes and e-cigarette devices to minors under the age of 18. Guidance for penalties is attached in Attachment D.

If a business is found to have changed ownership and has not reported it in accordance with Section 2 of these Rules and Regulations, the Tobacco Sales Permit may be revoked by the Director after a Hearing.

Tobacco Sales Permits for businesses delinquent in their payments to the Tax Collector, or who are in violation of other local, state, or federal laws, may be revoked by the Director after a Hearing.

All decisions by the Director may be appealed to the Board of Appeals.

Attachments:

Attachment A: Clarifying Examples for Change of Ownership scenarios

Attachment B: Planning definition of retail food

Attachment C: Affidavit

Attachment D: Guidance for the Pilot Program for SFDPH Tobacco Sales to Minor Violations Suspension Reduction



Attachment A: Clarifying Examples for Change of Ownership scenarios

All changes of business, corporate or partnership structure, including adding or removing partners, changing stock ownership percentages, and changes to a permittee’s address, email, phone or other contact information must be reported to the Department in writing by email (EnvHealth.DPH@sfdph.org) or letter (SFDPH Retail Tobacco Program, 1390 Market Street, Suite 210, San Francisco, CA 94102) within 30 days of such change.

Examples where the Department may issue an Amended Permit or where a New Tobacco Sales Permit must be applied for include but are not limited to the following change in ownership scenarios. This attachment may be updated at the discretion of the Department.

May Qualify for an Amended Permit

Will not Qualify for an Amended Permit (i.e. must apply for a New Tobacco Sales Permit)

If the sole proprietor of a business creates a partnership or corporation with one or more additional individuals by transferring 49% or less of the ownership of the business to the new individual(s), the new partnership will be issued an amended Retail Tobacco Permit with accurate ownership information. The Amended Permit issued will retain the same rights as the Ownership Type of the previous permit with respect to the exceptions in Chapter 19H.

Franchise parent corporations holding a permit on January 18, 2015 and wishing to transfer the ownership to a franchisee on or after January 18, 2015 must apply for a New Tobacco Sales Permit.

A single original owner of a corporation may seek an Amended Permit as a sole proprietor without being subject to the grounds for denial listed in 19H.4(f) or 19H.5(a), and the holder of the Amended Permit will retain the same rights as the Ownership Type of the previous permit with respect to the exceptions in Chapter 19H.

Partnerships consisting of two or more individuals or entities **on January 18, 2015** wishing to add or remove partners in such a way that changes the ownership percentage of at least one of the individuals by 50% or more of their percentage as of January 18, 2015 must apply for a New Tobacco Sales Permit.

A single original owner who is a sole proprietor may seek an Amended Permit as a corporation for which they are the only owner without being subject to the grounds for denial listed in 19H.4.f. or 19H.5.a. and the Amended Permit issued will retain the same rights as the Ownership Type of the previous permit with respect to the exceptions in Chapter 19H.

Partnerships consisting of two or more individuals or entities created **after January 18, 2015** wishing to add or remove partners must apply for a New Tobacco Sales Permit.

An original owner that is a partnership owned equally by exactly two people (i.e. at 50% each) may eliminate one owner to create a sole proprietorship without being subject to the grounds for denial listed in 19H.4(f) or 19H.5(a) and the permit issued will retain the same rights as an “Original Owner” with respect to the exceptions in Chapter 19H.

Corporations that change their stock ownership by >25% from the ownership configuration that was in place on January 18, 2015, regardless of how much or how little time has passed, must apply for a New Tobacco Sales Permit

[Print](#)

San Francisco Planning Code

SEC. 790.102. SALES AND SERVICES, OTHER RETAIL.

A retail use which provides goods and/or services but is not listed as a separate zoning category in zoning category numbers .41 through .63 listed in Article 7 of this Code, including but not limited to, sale or provision of the following goods and services:

(a) **General groceries.** As used herein, general groceries means:

(1) An individual retail food establishment that:

(A) Offers a diverse variety of unrelated, non-complementary food and non-food commodities, such as beverages, dairy, dry goods, fresh produce and other perishable items, frozen foods, household products, and paper goods;

(B) May provide beer, wine, and/or liquor sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general) within the accessory use limits as set forth in Section 703.2(b)(1)(C)(vi);

(C) Prepares minor amounts or no food on-site for immediate consumption; and

(D) Markets the majority of its merchandise at retail prices.

(b) **Specialty groceries.** As used herein, specialty groceries means:

(1) An individual retail food establishment that:

(A) Offers specialty food products, such as baked goods, pasta, cheese, confections, coffee, meat, seafood, produce, artisanal goods and other specialty food products, and may also offer additional food and non-food commodities related or complementary to the specialty food products;

(B) May provide beer, wine, and/or liquor sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general) within the accessory use limits as set forth in Section 703.2(b)(1)(C)(vi);

(C) Prepares minor amounts or no food on-site for immediate consumption; and

(D) Markets the majority of its merchandise at retail prices.

(c) Pharmaceutical drugs and personal toiletries;

(d) Personal items such as tobacco and magazines;

(e) Self-service laundromats and dry cleaning, where no portion of a building occupied by such use shall have any opening other than fixed windows and exits required by law



Attachment D

Suspension Reduction Guidance August 2015

Sales of tobacco products, including electronic cigarette or e-cigarette devices (with or without nicotine cartridges) are prohibited to minors under age 18. In May 2015 **Department of Public Health - Environmental Health and Tobacco Free Project** sought community input on a new policy to improve the consistency and equity of our enforcement of suspension periods for tobacco sales-to-minor violators and is piloting the attached guidance.

Preventing sales of tobacco products to minors is one of the city's strategies to reduce the adverse health effects of tobacco-related diseases in San Francisco. For the first time violator, the law allows the Department of Public Health to suspend tobacco retail permits for up to 90 days for selling tobacco or e-cigarette devices to a minor under the age of 18. Typically, the Department of Public Health imposes suspensions of 20 to 30 days for first time violators of the tobacco or e-cigarette device sales to minor law.

All suspensions are appealable, but fewer than one-fourth of the businesses facing suspension file their case at the San Francisco Board of Appeals, which has discretion to reduce the suspension period. We have good evidence that the businesses that serve suspensions without undergoing an appeal process have similar circumstances surrounding the violation as those that do appeal (e.g. new employees, confusion about the law, extenuating health or emotional circumstances, financial hardship, etc.). The main difference is that the businesses that do not appeal are the ones that have neither time nor resources to file an appeal, and this disparity creates an unfair business advantage.

This suspension reduction guidance is being implemented on a pilot basis to create a consistent suspension determination process that allows all businesses an equal opportunity to reduce their suspension periods when they implement measurable and observable strategies that ensure youth will not access tobacco and nicotine products at their stores.

The following suspension reduction guidelines provide a consistent enforcement policy and achieve simultaneous goals:

- (1) reducing prevalence of smoking and minor's access to tobacco products
- (2) meeting one or more additional public health goals such as improving nutrition
- (3) promoting a sustainable business model
- (4) building a healthy community.

At the discretion of the Director of Public Health, the Department of Public Health may reduce suspensions by up to a total of 28 days for a combination of strategies that are verified as being implemented by the business found to have violated the tobacco or e-cigarette device sales to minor law in San Francisco.

Guidance for the Pilot Program for SFDPH Tobacco Sales to Minor Violations Suspension Reduction August 2015

BASELINE SUSPENSION PERIODS

19H.19(a) states that the Department of Public Health Director may suspend the permit for a maximum of 90 days for the first violation. Moreover, 19H.19(b) and (c) increases suspension times for second and third violations to 180 and 365 days, respectively, when the repeat offense occurs within 1 year of the previous violation. Therefore, when a repeat violation occurs more than one year since the previous violation, the Department of Public Health Director must apply the suspension period of up to 90 days as defined in Section 19H.19(a).

Number of Times Permit Holder Repeats a Violation under 19H.19(a)	Baseline Suspension Periods*
First violation	25 days
Second violation that occurs more than 1 year of the first violation	40 days
Third violation that occurs more than 1 year of the second violation	60 days
Fourth or subsequent violations that occur more than 1 year of third or previous violation	90 (maximum)

*If the Permit Holder, agent of the Permit Holder, or employee asked for age or identification, DPH may reduce the baseline suspension period by up to 3 days.

Upon verification that one or more of the strategies below are implemented at the business, the Director may reduce the suspension periods by up to an additional 25 days as follows.

Strategy		Suspension Reduction
1. Training		
1	Retrain Permit Holder, employees and cashiers that may sell tobacco products or electronic cigarettes to minors; and Written documentation of all persons that were retrained	-5 days
2. Equipment and Display		
2a	Install a scanner or other age verification device (This strategy is not an option if the business already has an age verification device installed)	-5 days
2b	Remove all visible tobacco and electronic cigarette device advertisements for as long as the Permit Holder owns the establishment	-10 days
2c	Cover all tobacco products , including but not limited to, electronic cigarette devices with permanently installed opaque covering	-15 days

EXAMPLES

Example I: if a first time offense business chooses to install a device that displays or identifies age from the picture id, then the permit suspension period would be reduced from 25 to 20 days. If the business additionally chooses to remove all visible tobacco and electronic cigarette device advertisements for as long as the Permit Holder owns the establishment, the suspension period would be reduced further to 10 days.

Example II: if a second time offense business cited for selling an e-cigarette to a minor chooses to remove all visible tobacco and electronic cigarette device advertisements for as long as the Permit Holder owns the establishment **and** covers all tobacco products and electronic cigarette devices with permanently installed opaque coverings the suspension period would be reduced further from 40 days to 15 days.