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## San Francisco Health Code

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## ARTICLE 19H: PERMITS FOR THE SALE OF TOBACCO

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### New Ordinance Notice

**Publisher's Note:** This Chapter includes sections affected by new legislation. [Click here for a list of all new legislation affecting sections of this Code.](#)

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## **SEC. 19H.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 (Health Code Article 19D), prohibit pharmacy sales of Tobacco Products (Health Code Article 19J), prohibit the self-service merchandising of Tobacco Products, except in places to which access by minors is prohibited by law (Police Code Section 4600.3), prohibit smoking in enclosed areas and sports stadiums (Health Code Article 19F) and prohibit the use of electronic cigarettes where smoking is not allowed (Health Code Article 19N).

(d) 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."

(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 in the community compared to California generally where there are approximately 36,700 licensed tobacco retail stores in California – one for every 254 youth.

(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 socioeconomic 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 (37) of tobacco permitted retailers 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.

(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 19H 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.

(Added as Sec. 1009.50 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.2. DEFINITIONS.



**Publisher's Note:** This section has been **AMENDED** by new legislation (Ord. [59-15](#), approved 5/8/2015, effective 6/7/2015, operative 1/1/2016). The text of the amendment will be incorporated below when the amending legislation is effective.

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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."

"Department" means the Department of Public Health.

"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.

"Establishment" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items.

"Permittee" means a person who has obtained a Tobacco Sales permit for a specific location pursuant to this Article.

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

"Restaurant" means a business 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. "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.

(Added as Sec. 1009.51 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.3. REQUIREMENT FOR TOBACCO SALES PERMIT.**

It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, in any establishment without first obtaining and maintaining a valid tobacco sales permit from the Department for each location where tobacco sales are conducted. Nothing in this Article shall be construed to grant any person obtaining and maintaining a tobacco sales permit any status or right other than the right to act as a tobacco retailer at the location identified on the face of the permit. The obtaining of a permit does not in and of itself transform a business into a retail tobacco or wholesale shop within the meaning of California Labor Code section 6404.5. It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, at an establishment for which the Director has suspended the tobacco sales while the period of suspension remains in effect. It shall be unlawful for any person to engage in or allow tobacco sales at an establishment for which the Director has revoked the tobacco sales permit for three years from the date of revocation. Permits are valid as long as the annual license fees are paid.

(Added as Sec. 1009.52 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.4. 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 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, e-mail address, and telephone number of the Applicant;
2. The Establishment name, address, e-mail 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 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) **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.

(e) **Display of Permit.** Each permittee shall display the permit prominently at each location where Tobacco Sales occur. No permit that has been suspended shall be displayed during the period of suspension. A permit that has been 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 supervisorial 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.

(Added as Sec. 1009.53 by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 194-08, File No. 080594, App. 8/7/2008; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## 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.

(Added by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.6. EXCEPTIONS FOR CERTAIN NEW PERMITS.

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.

(Added by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.7. 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 otherwise governed 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.\*

(b) Beginning with fiscal year 2008-2009, fees set forth in this Section and referred to in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director shall report to the Controller the revenues generated by the



fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue which is significantly more than the costs of providing the services for which the fees<sup>1</sup> are assessed.

The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

(Added as Sec. 1009.54 by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. [238-11](#), File No. 111101, App. 12/15/2011; Eff. 1/14/2012; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

#### CODIFICATION NOTE

1. So in Ord. [238-11](#) and previously.

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### **SEC. 19H.8. PERMIT MAY NOT BE TRANSFERRED TO NEW PERSONS OR LOCATIONS.**

As described in Section 77 of the San Francisco Business and Tax Regulations Code, tobacco permits may not be transferred or assigned.

(Added as Sec. 1009.55 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.9. ENFORCEMENT AND INSPECTION.**

The Director may enforce all provisions of this Article. Specific grounds for enforcement are set forth in Sections 19H.10 through 19H.18. 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.

(Added as Sec. 1009.56 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.10. CONDUCT VIOLATING HEALTH CODE ARTICLE 19D (REGULATING CIGARETTE VENDING MACHINES).**

(a) Upon a decision by the Director that the Permittee or the agent or employee has engaged in any conduct that violates Health Code Article 19D (regulating cigarette vending machines), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, 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.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.57 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.11. CONDUCT VIOLATING 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 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.19, impose administrative penalties as set forth in Section 19H.20, 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.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.58 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.12. CONDUCT VIOLATING HEALTH CODE ARTICLE 19F (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 Health Code Article 19F (prohibiting smoking in enclosed areas and sports stadiums), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, 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.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.59 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.13. 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.19, impose administrative penalties as set forth in Section 19H.20, 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.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.60 by Ord. 194-08, File No. 080594, App. 8/7/2008; amended by Ord. 173-09, File No. 090724, App. 7/21/2009; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.14. 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.19.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.61 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.15. 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.19.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.62 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.16. FRAUDULENT PERMIT APPLICATIONS.**

(a) Upon a 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 suspend a Tobacco Sales permit as set forth in Section 19H.19.

(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.20.

(c) 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.

(d) 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.

(e) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(f) 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.

(Added as Sec. 1009.63 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.17. SELLING TOBACCO WITHOUT A PERMIT.**

(a) 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.20. Persons with a permit application pending under Section 1009.53<sup>1</sup> may sell tobacco without violating Section 1009.64<sup>1</sup> until and unless their permit application is rejected by the Director.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article. This Notice of Initial Determination may require that all tobacco sales cease and may impose an administrative penalty.

(c) 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 this 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.

(Added as Sec. 1009.64 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

### **CODIFICATION NOTE**

1. The sections referenced in the last sentence of division (a) were redesignated as Sec. 19H.4 and this Sec. 19H.17, respectively, by Ord. [259-14](#).

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## **SEC. 19H.18. OTHER ENFORCEMENT.**

(a) Violations of this Article are hereby declared to be public nuisances and may be enforced as set forth in Section 596 of the San Francisco Health Code.

(b) Violations of this Article are hereby declared to be unfair business practices and are presumed to damage each and every resident of the community in which the business operates.

(c) In addition to other remedies provided by this Article or by other law, any violation of this

ordinance may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The person against whom a successful civil action is brought shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco.

(Added as Sec. 1009.65 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.19. 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, 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.

(Added as Sec. 1009.66 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.20. ADMINISTRATIVE PENALTY.**

When this Article allows the Director to impose an administrative penalty, the Director may assess an administrative penalty not exceeding one hundred dollars (\$100) for a first violation; not exceeding two hundred dollars (\$200) for a second violation; and not exceeding five hundred dollars (\$500) for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation.

(Added as Sec. 1009.67 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.21. 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.22 of this Article.

(Added as Sec. 1009.68 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.22. NOTICE OF INITIAL DETERMINATION.**

When the Director sends a notice of initial determination, the Director shall serve the notice on the permittee or the permittee's agent. The Notice of Initial Determination may require that all tobacco sales cease. The notice shall state the basis for the Department's initial determination, including the alleged acts or failures to act that constitute a basis for suspension, revocation, and/or an administrative penalty as provided in this Article. After affording the permittee an opportunity to provide information contesting the initial determination, the Director shall issue a decision, including an order imposing an administrative penalty, if any. Copies of this decision and related order(s) shall be served upon the party served with the notice of initial determination. If no notice of appeal of the Director's decision is filed within the appropriate period, the decision shall be deemed final and shall be effective 15 days after it was issued.

(Added as Sec. 1009.69 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.23. PAYMENT OF ADMINISTRATIVE PENALTIES.**

Unless a timely notice of appeal of the Department's final decision is filed, the Department may require payment of any administrative penalty within 30 days of the Director's decision. The Department shall make a written demand for payment by personal delivery or certified mailed notice to the person sanctioned. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The person against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this section, including obtaining a court order requiring payment of the administrative penalty.

(Added as Sec. 1009.71 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.24. APPEALS TO BOARD OF APPEALS.**

(a) **Right of Appeal.** The final decision of the Director to deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article I of the San Francisco Business and Tax Regulations Code. An appeal shall stay the action of the Director.

(b) **Hearing.** The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article I of the San Francisco Business and Tax Regulations Code.

(Added as Sec. 1009.72 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### **SEC. 19H.25. OTHER REMEDIES.**

Nothing in this Article shall affect any other remedies which are available to the City and County under any law, including (1) Health Code Article 19D (regulating cigarette vending machines); (2) Police Code Section 4600.3 (regulating the self-service merchandising of tobacco products); (3) Health Code Article 19F (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).

(Added as Sec. 1009.73 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.26. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

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

(Added as Sec. 1009.74 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.27. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL WELFARE.**

In undertaking the enforcement of 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.

(Added as Sec. 1009.75 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.28. PREEMPTION.**

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed or expressly authorized by federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by federal or state law.

(Added as Sec. 1009.76 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.29. SEVERABILITY.**

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

(Added as Sec. 1009.77 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.50. [REDESIGNATED.]**

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.1 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.51. [REDESIGNATED.]**

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