

Vapor Products*

Digest by the Ballot Simplification Committee

Status: Draft for Consideration
On: Tuesday, August 6, 2019
Members: Packard, Anderson, Raveche

Deadline to Request Reconsideration: TBD

The Way It Is Now: The City and the State of California regulate the sale of tobacco products. The term “tobacco products” includes vapor products such as electronic cigarettes, their cartridges and other parts, and liquid nicotine. Electronic cigarettes are battery-operated devices that vaporize liquid nicotine and deliver it to the user.

City and State law prohibit the sale of vapor products in San Francisco in the following ways:

- The City and State prohibit the retail sale of tobacco products to people under age 21 and the State prohibits the sale of tobacco products on the internet to people under age 21.
- The City prohibits the sale of vapor products everywhere the sale of other tobacco products is prohibited.
- The City prohibits the sale of flavored tobacco products, including flavored vapor products.
- Beginning in late January 2020, the City will suspend the sale of electronic cigarettes that have not then gone through required pre-market review by the U.S. Food and Drug Administration (“FDA”). As of July 2019, the FDA has not completed that review for any electronic cigarette product and the FDA probably will not have done so by late January 2020.

In situations where the sale of vapor products, like other tobacco products, is allowed in San Francisco, the City and State also regulate the sale of those products in the following ways:

- Tobacco retailers must obtain permits from the City and the State, and tobacco distributors must obtain a license from the State.
- State law requires tobacco retailers to check the identification of any customer who appears to be under age 21, and to store vapor products where customers cannot access them without assistance.
- State law requires sellers and distributors of vapor products on the internet to verify that customers are at least 21 years old.

City law prohibits the sale, manufacture, and distribution of vapor and other tobacco products on City property.

City law prohibits advertising of certain tobacco products on billboards or other publicly visible signs in San Francisco and on City property. Federal and State law impose additional advertising restrictions for tobacco products.

The Proposal: Proposition ____ would prevent the City from prohibiting the manufacture, wholesale, and online retail sale of vapor products in San Francisco. The measure would also repeal certain existing City laws regarding vapor products and impose regulations on the sale and distribution of vapor products in San Francisco that would:

- Prohibit retailers and others from selling or distributing vapor products to people under age 21;
- Prohibit retailers from selling vapor products everywhere the sale of other tobacco products is prohibited;
- Require retailers to place vapor products where customers cannot access them without assistance;

**Working title, for identification only. The Director of Elections determines the title of each local ballot measure; measure titles are not considered during Ballot Simplification Committee meetings.*

- Require retailers to scan photo identification of customers to verify that they are 21 years or older;
- Prohibit retailers from selling more than two vapor product devices or five finished product packages of liquid nicotine, per transaction; and
- Require retailers to train their employees about these requirements twice a year.

Proposition ___ would also require individuals and entities that sell more than 100 vapor products per year on the internet to San Francisco customers to:

- Obtain a permit from the City;
- Verify that customers are at least 21 years old; and
- Sell no more than two vapor product devices or 60 milliliters of liquid nicotine, per month, to each customer.

Proposition ___ would prohibit knowingly advertising vapor products designed to appeal to minors or using an advertising medium known to be seen primarily by people under 21 years old.

Proposition ___ states that it would comprehensively authorize and regulate the retail sale, availability, and marketing of vapor products in San Francisco. The measure would repeal the City law suspending the sale of electronic cigarettes that lack required approval by the FDA. It would partially repeal the City law that prohibits the sale, manufacture, and distribution of tobacco products on City property by allowing the sale, manufacture, and online retail sale of vapor products on City property. The measure may also repeal other existing City laws that apply to vapor products, including the City law that prohibits the sale of flavored vapor products.

A "YES" Vote Means: If you vote "yes," you want to:

- Prevent the City from prohibiting the manufacture, wholesale, and online retail sale of vapor products in San Francisco;
- Repeal certain existing City laws relating to vapor products and impose laws permitting the sale of electronic cigarettes and other vapor products to people over age 21;
- Regulate these sales by imposing storage requirements on retailers, requiring retailers and internet sellers to obtain City permits and use age verification technology, and limiting the number of vapor products that retailers and internet sellers may sell per transaction; and
- Restrict the knowing advertising of vapor products to people under age 21.

A "NO" Vote Means: If you vote "no," you do not want to make these changes.