

SAN FRANCISCO
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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

[TITLE]

[SUMMARY]

Be it ordained by the People of the City and County of San Francisco.

SECTION 1. Title.

This Initiative shall be known and may be cited as the “An Act to Prevent Youth Use of Vapor Products” (referred to hereinafter as the “Initiative”).

SECTION 2. Findings & Conclusions.

The People of the City and County of San Francisco (the “City”) declare their findings and purposes in enacting this Initiative to be as follows:

(a) Recent reports suggest that despite existing laws and regulations, significant numbers of youth under the age of 21 in San Francisco are gaining unlawful access to vapor products (also known as “e-cigarettes”).

(b) Research into youth access and use of tobacco products, including vapor products, finds that the most common source for these products is “social sourcing” wherein persons of legal age purchase these products and then sell or share them with those underage.

(c) Enhanced regulations and restrictions that limit youth access to tobacco products, such as advanced, automated age-verification techniques and pre-set purchasing limits, can reduce the potential for failed age verification and social sourcing and ultimately lead to declines in the use of vapor products by individuals under the age of 21.

(d) Vapor products are not intended for use by any person under the age of 21.

(e) Vapor products are designed for the express purpose of reducing the deadly effects of combustible cigarette smoking, which causes approximately 480,000 deaths in the U.S. every year and imposes health care and lost economic productivity costs of nearly \$300 billion a year, by offering adult smokers an alternative nicotine delivery system that does not produce the multitude of harmful carcinogens and toxicants associated with the inhalation of burnt tobacco and smoke resulting from the use of combustible cigarettes.

(f) To preserve the harm-reduction potential of vapor products we must ensure that they stay out of the hands of youth and that their access is restricted to adults.

(g) This article is intended to impose additional safeguards to prevent the access to and sale of vapor products by those under the age of 21 years and to restrict the marketing of vapor products to those underage, while preserving access for adults to enable them to transition from the use of combustible cigarettes.

SECTION 3. Amendment of Section 19N.2 of the Health Code

2019 MAY 14 PM 3:28

Section 19N.2 of the San Francisco Health Code is hereby amended to read as follows.

SEC. 19N.2. DEFINITIONS.

- (a) "Director" means the Director of Public Health or his or her designee.
- (b) "Vapor product," "Electronic Cigarette" or "E-cigarette" means any device with a heating element, a battery or an electronic circuit that provides nicotine or other vaporized liquids to the user in a manner that stimulates smoking tobacco electronic nicotine delivery system and includes any devices, components, and/or parts that deliver aerosolized nicotine-containing e-liquid when inhaled, and it includes the replacement or refill cartridge, pod, fluid, or other method for re-use of a vapor product.
- (c) "Establishment" means any store, stand, booth, concession or other enterprise located in the City and County of San Francisco that engages in the onsite retail sales of tobacco products and/or electronic cigarettes vapor products.
- (d) "Online retailer" means any individual or entity that sells more than 100 vapor products directly to consumers whose addresses are within the City and County of San Francisco via an internet-based website or retail sales platform per year.
- (e) "Manufacturer" means any individual or entity located in the City and County of San Francisco that makes more than 100 vapor products per year.
- (f) "Wholesaler" means any individual or entity that distributes or sells vapor products to an establishment located in the City and County of San Francisco for the purpose of onsite retail sales or to an online retailer for the purpose of online retail sales.

SECTION 4. Amendment of Section 19N.3 of the Health Code

Section 19N.3 of the San Francisco Health Code is hereby amended to read as follows:

SEC. 19N.3. ~~TOBACCO SALES PERMIT REQUIRED.~~

- (a) An establishment must have a valid tobacco sales permit obtained pursuant to Health Code Section ~~1009.52~~19H.3 to sell ~~electronic cigarettes vapor products.~~
- (b) Effective six months after the Director has adopted regulations providing for the application process in subdivision (c), an online retailer must have a valid online retail permit to sell vapor products in the City and County of San Francisco, except where the Director has failed to approve or deny the application within 90 days of its submission.
- (c) The Director shall promulgate regulations providing for an application and appeal process for issuing a permit to an online retailer and for the payment of an application and annual license fee sufficient to cover the costs of reviewing and evaluating the application or renewal. The application fee shall be submitted at the time of the application and the annual fee shall be due annually by March 31 of each year. The regulations shall address the requirements for approval and the grounds for denial or suspension of a permit, which shall be based on the requirements of this article, and the procedure for an appeal of a denial. The permitting process for an online retailer shall not be materially more burdensome than the process for obtaining a tobacco sales permit.
- (d) ~~The~~ The Director may enforce this section pursuant to Articles 19 *et seq.* of the Health Code including but not limited to the Articles prohibiting smoking in certain spaces or areas.

2019 MAY 14 PM 3:29

DEPARTMENT OF ELECTIONS

SECTION 5. Amendment of Section 19N.4 of the Health Code

Section 19N.4 of the San Francisco Health Code is hereby amended to read as follows:

SEC. 19N.4. PROHIBITING THE USE OF ~~ELECTRONIC CIGARETTES~~VAPOR PRODUCTS WHEREVER SMOKING OF TOBACCO PRODUCTS IS BANNED.

(a) The use by any person of vapor products ~~electronic cigarettes~~ is prohibited wherever smoking of tobacco products is prohibited by law including Articles 19 *et seq.* of the Health Code.

(b) The Director may enforce this section pursuant to Articles 19 *et seq.* of the Health Code including but not limited to the Articles prohibiting smoking in certain spaces or areas.

SECTION 6. Amendment of Section 19N.5 of the Health Code

Section 19N.5 of the San Francisco Health Code is hereby amended to read as follows:

SEC. 19N.5. PROHIBITING THE SALE OF ~~ELECTRONIC CIGARETTES~~VAPOR PRODUCTS WHEREVER THE SALE OF TOBACCO PRODUCTS IS PROHIBITED.

(a) The sale by an establishment of electronic cigarettes-vapor products is prohibited wherever the sale of tobacco products is prohibited by law, including as prohibited in Articles 19 *et seq.* of the Health Code.

(b) The Director may enforce this section pursuant to Articles 19 *et seq.* of the Health Code including but not limited to Article 19J.

(c) Neither this section nor Article 19K nor any other provision of law apply to prohibit the manufacture, wholesale, or online retail sale of vapor products.

SECTION 7. Enactment of Section 19N.5-1 of the Health Code

The San Francisco Health Code is hereby amended by adding Section 19N.5-1 to read as follows:

SEC. 19N.5-1. PROHIBITING THE SALE OF VAPOR PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE, INCLUDING ELECTRONIC AGE VERIFICATION

In addition to the restrictions contained in Sections 19N.5 and 19P.3:

(a) No person shall knowingly purchase a vapor product for another person who is under the age of 21, or provide a vapor product to another person who is under the age of 21 without charge, for nominal charge, or for barter or exchange.

(b) No establishment shall knowingly sell or distribute a vapor product to a person who is under the age of 21.

(c) No online retailer shall knowingly sell a vapor product for delivery in the City and County of San Francisco to a person under the age of 21.

(d) No wholesaler or manufacturer shall knowingly distribute a vapor product for delivery in the City and County of San Francisco to a person under the age of 21.

(e) No establishment shall sell vapor products to any person in the City and County of San Francisco unless the following requirements are met:

(1) The vapor product has been placed behind the counter or in a lock-box, requiring vendor assistance;

2019 MAY 14 PM 3:29

(2) The establishment requires the customer to submit a government-issued photo identification, as defined in Business and Professions Code section 22963, subdivision (b)(1)(B), and reviews and scans the identification to automatically verify that the purchaser is at least the age of 21 and that the identification has not expired; and

(3) The amount of vapor products that can be purchased during the transaction is limited to no more than 2 devices and/or 5 finished product packages of nicotine-containing liquid.

(f) In addition to the requirements in Business and Professions Code section 22963, subdivisions (a) and (b), no online retailer shall sell, or deliver, vapor products to a person whose address is in the City and County of San Francisco unless the following requirements are met:

(1)(A) The purchaser creates an online profile or account through the online retailer with personal information, including, but not limited to, the purchaser's name, address, and date of birth, and the online retailer verifies that information through a third party against publicly-available records and/or databases to determine that the purchaser is at least the age of 21; or

(1)(B) The purchaser uploads a copy of his or her government-issued photo identification which is verified by a third party to determine that the purchaser is at least the age of 21; and

(2) The online retailer shall limit the amount of product that can be purchased within a calendar month to no more than 2 devices and/or 60 milliliters of nicotine-containing liquid.

(g) The Director may enforce this section pursuant to Articles 19 *et seq.* of the Health Code including, but not limited to, administrative penalties and suspension or revocation of a permit pursuant to Article 19H. The restrictions in this section 19N.5-1 for the sale of vapor products in establishments and online shall take effect and be subject to enforcement commencing six months after the effective date of this section.

SECTION 8. Enactment of Section 19N.5-2 of the Health Code

The San Francisco Health Code is hereby amended by adding Section 19N.5-2 to read as follows:

SEC. 19N.5-2. PROHIBITION ON MARKETING VAPOR PRODUCTS TO MINORS

(a) No manufacturer, wholesaler, establishment, or online retailer shall knowingly market vapor products to minors.

(b) For purposes of this section "market vapor products to minors" means (i) to advertise, package, or label a vapor product in a manner designed to appeal to minors through the use of symbols, language, music, or cartoon characters intended to appeal primarily to persons under 21 years of age; or (ii) using an advertising medium that is known to be seen primarily by persons under 21 years of age.

SECTION 9. Enactment of Section 19N.5-3 of the Health Code

The San Francisco Health Code is hereby amended by adding Section 19N.5-3 to read as follows:

SEC. 19N.5-3. PROHIBITING THE ADVERTISING OF VAPOR PRODUCTS WHEREVER THE ADVERTISING OF TOBACCO PRODUCTS IS PROHIBITED

2019 MAY 14 PM 3:29

(a) The advertising of vapor products is prohibited wherever advertising of tobacco products is prohibited by law including Section 674 of the Police Code and Section 4.20 of the Administrative Code.

(b) Violations of this Section shall be punishable as an infraction pursuant to Section 710.3 of the Police Code.

SECTION 10. Enactment of Section 19N.5-4 of the Health Code

The San Francisco Health Code is hereby amended by adding Section 19N.5-4 to read as follows:

SEC. 19N.5-4. REQUIRED TRAINING.

(a) Each establishment that is permitted to sell vapor products shall, at least once semiannually, provide at least one hour of training to each of its employees regarding compliance with this Article 19N, and with Article 19P of the Health Code.

(b) The Director, after a noticed public hearing, may adopt rules and regulations to specify the content of such training, provided, however that such rules and regulations may not result in the prescribed training exceeding one-and-one-half hours per training session. Such rules and regulations shall take effect no earlier than 90 days after the date of adoption. Violation of any such rule or regulation may be grounds for administrative or civil action against the permittee pursuant to this Section 19H.14-3.

SECTION 11. Enactment of Section 19N.5-5 of the Health Code

The San Francisco Health Code is hereby amended by adding Section 19N.5-5 to read as follows:

SEC. 19N.5-5. EDUCATION AND OUTREACH PROGRAM TO MINORS REGARDING VAPOR PRODUCTS.

(a) The Director shall develop an educational and outreach program in connection with the Tobacco Free Project of the San Francisco Department of Public Health to inform parents, young adults, and children on the effects of nicotine consumption and the use of vapor products.

(b) The Director shall develop an informational website and bulletin that can be distributed to children in K-12 schools, to the Department of Social Services, the Recreation and Parks Department, the Library Commission, and other departments that the Director deems appropriate.

(c) The Director shall monitor the effectiveness of the education and outreach program in reducing the use of tobacco products and vapor products by persons under 21 years of age.

SECTION 12. Enactment of Section 19N.5-6 of the Health Code

The San Francisco Health Code is hereby amended by adding Section 19N.5-6 to read as follows:

SEC. 19N.5-6. COMPREHENSIVE REGULATION OF VAPOR PRODUCTS

(a) This article is intended to comprehensively authorize and regulate the retail sale, availability, and marketing of vapor products in the City and County of San Francisco.

(b) Notwithstanding subsection (a), nothing in this Article shall be construed to prohibit the enactment by the Board of Supervisors of a reasonable regulatory fee within the meaning of Article

2019 MAY 14 PM 3:29

XIIC, section 1, subdivision (e)(3), of the California Constitution for purposes of the permits required under this Article, to the extent otherwise permitted by applicable law.

SECTION 13. Enactment of Section 19H.14-3 of the Health Code

The San Francisco Health Code is hereby amended by adding Section 19H.14-3 to read as follows:

SEC. 19H.14-3. CONDUCT VIOLATING HEALTH CODE SECTIONS 19N.5-1, 19N.5-2, 19N.5-3, OR 19N.5-4.

(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 Section 19N.5-1 (Prohibiting The Sale Of Vapor Products To Persons Under 21 Years Of Age Including Electronic Age Verification), Section 19N.5-2 (Prohibition on Marketing Vapor Products to Minors), Section 19N.5-3 (Prohibiting the Advertising of Vapor Products Wherever the Advertising of Tobacco Products is Prohibited), or Section 19N.5-4 (Required Training), the Director may suspend the permit required under Section 19N.3 in the same fashion set forth in Section 19H.19, impose administrative penalties in the same fashion set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement pursuant to this Section 19H.14-3 by serving either a notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22 of this Article 19H; provided, however, that for a first violation during the period commencing on the effective date of this Section and for six months thereafter, the Director may serve only a notice of correction and may not serve a notice of initial determination or impose a permit suspension or administrative penalty. For a second violation occurring within the first twelve months, or a first violation occurring after the first twelve months, the Director may serve either a notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22, and may impose a permit suspension or administrative penalty in accordance with subsection (a), above.

(c) Any person who violates subsection (a) of Section 19N.5-1 hereof shall be subject either to a criminal action for a misdemeanor or a civil action punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

SECTION 14. Interpretation.

This Act must be interpreted so as to be consistent with all federal and state laws, rules, and regulations. It is the intent of the voters that the provisions of this Act be interpreted or implemented in a manner that facilitates the purposes set forth in this Act. The title of this Initiative and the captions preceding the sections of this Initiative are for convenience of reference only. Such title and captions shall not define or limit the scope or purpose of any provision of this Initiative. The use of the terms "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term, or matter.

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2019 MAY 14 PM 3:29

DEPARTMENT OF ELECTIONS

SECTION 15. Severability.

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable. The voters declare that this Act, and each section, sub-section, sentence, clause, phrase, part, or portion thereof, would have been adopted or passed irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases, part, or portion is found to be invalid. If any provision of this Act is held invalid as applied to any person or circumstance, such invalidity does not affect any application of this Act that can be given effect without the invalid application.

SECTION 16. Conflicting Ballot Measures.

In the event that this Act and another measure or measures relating to the sale of vapor products, including any proposal to prohibit the sale thereof, shall appear on the same municipal election ballot, the provisions of such other measures shall be deemed to be in conflict with this Act. In the event that this Act shall receive a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety and each and every provision of the other measure or measures that conflict, in whole or in part, with this Act shall be null and void in their entirety. In the event that the other measure or measures shall receive a greater number of affirmative votes, the provisions of this Act shall take effect to the extent permitted by law.

SECTION 17. Effective Date.

In accordance with the provisions of Municipal Elections Code § 380 and California Elections Code § 9217, if a majority of the voters vote in favor of the Initiative, the Initiative shall go into effect ten days after the official vote count is declared by the Board of Supervisors.

SECTION 18. Amendment.

Pursuant to Municipal Elections Code § 390 and California Elections Code § 9217 the provisions of this Initiative may only be amended by a vote of the People.