



Legislative Background

BOS File No. 170441

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Name: Health Code - Banning the Sale of Flavored Tobacco Products

Legislation Overview:

Ordinance amending the Health Code to prohibit tobacco retailers from selling flavored tobacco products, including menthol cigarettes.

Sponsor(s): Cohen, Safai, Breed, Farrell, Sheehy, Tang
Date Introduced: 4/18/2017
Date Referred: 4/24/2017
Scheduled for BOS Committee: June (tentatively)

Existing Law

Federal law bans the manufacture of cigarettes with characterizing flavors, other than the flavor of menthol and tobacco. Federal law does not ban the manufacture of menthol cigarettes or flavored tobacco products other than cigarettes.

Purpose of Ordinance

Prohibits the sale or distribution by an Establishment¹ of any flavored cigarette or tobacco product. Does not criminalize possession of such products.

Amendments to Current Law

The proposed ordinance amends the Health Code to prohibit local tobacco retailers from selling flavored tobacco products. The tobacco products that would be subject to the prohibition on sale would include, but not be limited to, flavored cigarettes, including menthol cigarettes, flavored cigars, flavored smokeless tobacco, flavored shisha, and flavored nicotine solutions that are used in electronic cigarettes.

The ordinance defines a flavored tobacco product as a tobacco product that contains a constituent that imparts a characterizing flavor. The ordinance would create a presumption that a tobacco product is flavored if the tobacco manufacturer makes a statement or claim that the product has a characterizing flavor. For example, if the packaging in which a tobacco product is sold is printed with the word "grape" or with an image of grapes, the tobacco product would be presumed to be flavored, and subject to the restriction on sale.

¹ "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.

Enforcement

- Begins on January 1, 2018
- Enforcing Agency: SFDPH
- Enforcement Tools:
 - SFDPH would be responsible for educating retailers about the new law.
 - Violation of the ordinance would be punishable by a suspension of the retailer's tobacco license.
- In conjunction with enforcement of the ban on sales, SFDPH and UCSF will offer programs to help tobacco users quit.

History of Tobacco and Smoking Laws in San Francisco

Since 2010, San Francisco has enacted at least 19 tobacco control laws. See [San Francisco Tobacco Control Laws March 2016](#) for more information.

Other Cities with Flavored Tobacco Bans

- New York City (except menthol tobacco products).
- Chicago (within a 500-ft radius of elementary/middle/secondary schools).
- Berkeley (600 foot buffer zone around K-12 schools).²
- Santa Clara County (Retailers only accessible to 21+ are exempted and can still sell flavored tobacco products).
- Hayward banned new hookah lounges and vapor stores that sell e-cigarettes. Existing vapor stores, hookah lounges, and businesses that sell tobacco would not be affected.³
- Pending: Oakland⁴
- Pending: San Leandro voted in Rules Committee on 4/24/17 to move legislation forward. The proposal to ban menthol cigarettes was put on hold.⁵

Diversion

Some tobacco users will quit using the programs offered by SFDPH and UCSF, thereby reducing demand. However, it is conceivable that demand for flavored tobacco products would not disappear completely (i.e., some users would not quit). Consumers who wish to continue consumption of flavored tobacco products could turn to other models that are not restricted by the proposed ordinance. Without regulation of alternative suppliers, the ordinance could simply divert sales away from San Francisco brick and mortar retailers, to websites and delivery applications.

² http://www.ci.berkeley.ca.us/Health_Human_Services/Environmental_Health/Tobacco_Retail_Buffer_Zone.aspx

³ <http://www.mercurynews.com/2014/06/25/hayward-bans-new-e-cigarette-stores-hookah-lounges/>

⁴ <http://sanfrancisco.cbslocal.com/2017/04/17/new-push-in-oakland-to-ban-flavored-tobacco-products/>

⁵ <http://www.ebcitizen.com/2017/04/san-leandro-looks-to-ban-flavored.html>

Definitions

Website: “a group of World Wide Web pages usually containing hyperlinks to each other and made available online by an individual, company, educational institution, government, or organization.”⁶

Mobile website: “A mobile website is designed specifically for the smaller screens and touch-screen capabilities of smartphones and tablets. It can be accessed using any mobile device's Web browser, like Safari on iOS and Chrome on Android. Users simply type in the URL or click on a link to your website, and the website automatically detects the mobile device and redirects the viewer to the mobile version of your website.”⁷

Mobile app: “A mobile app is a smartphone or tablet application. Unlike a mobile website, a mobile app must be downloaded and installed, typically from an app marketplace, such as the Apple App Store or Android's Google Play store.”

Website Purchases

As written, the legislation does not prevent websites from selling flavored tobacco products to consumers in San Francisco (ex: Smoker's Outlet Online).

Questions:

- ☐ What are the requirements/regulations for online retailers?
- ☐ Can tobacco be bought online and sold across state lines?
- ☐ Are out-of-state vendors required to pay taxes to the CA Board of Equalization? How about San Francisco's Treasurer and Tax Collector? If so, how (and how well) is this enforced?
- ☐ Scenario 1: A tobacco retailer opens up a warehouse in Daly City and delivers flavored tobacco products to customers in San Francisco. Would this be allowed?
- ☐ Scenario 2: A tobacco retailer opens up a warehouse somewhere in California and fulfills online orders through UPS or FedEx carriers (vs. USPS, which has certain restrictions). Would this be allowed? If so, what are the tax obligations and how would they be enforced?

Delivery Sales

Companies such as Saucey and Room Service offer alcohol, snack, and tobacco delivery. Orders are placed through the website or mobile app.

Questions:

- ☐ Does the proposed ordinance restrict delivery of flavored tobacco products from neighboring municipalities?
- ☐ What are the tax requirements for companies that deliver flavored tobacco products to consumers in San Francisco? How (and how well) are they enforced?
- ☐ Scenario 3: A delivery service purchases flavored tobacco products from neighboring cities and delivers them to customers in San Francisco. The transaction could occur through a

⁶ <https://www.merriam-webster.com/dictionary/website>

⁷ <http://www.businessnewsdaily.com/6783-mobile-website-vs-mobile-app.html>

mobile app, website, or by phone. Would this be allowed? If so, what are the tax obligations and how would they be enforced?

Data / Findings

Questions:

- ☐ Do you have data that is comparable to the nationwide data in Section 19Q.1, but specific to San Francisco and/or California?
- ☐ The “Findings” section discusses youth use of flavored tobacco products. California was the second state to raise the legal purchase age to 21.⁸
 - What has been the effect thus far of raising the legal purchase age to 21?
 - Has it decreased youth access?
 - Is the increased purchase age not expected to curb youth access to flavored tobacco products?

⁸ Legal purchase age is 18 in most states. Four states allow purchase at 19. Two states (CA and HI) raised the purchase age to 21 in 2016. See Figure 1 on page 5.

