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April 8, 2019

Resolution No. 002-2019-SBC

Economic Mitigation Measures Responsive to City Mandated Tobacco Control Laws

Resolution

WHEREAS, the Small Business Commission, whose mandate was established by the voters in 2003; and

WHEREAS, that mandate specifically authorizes the Small Business Commission to set policies for the City regarding small businesses, consistent with any overall objectives established by the Mayor and the Board of Supervisors through the adoption of legislation, in order to promote the economic health of the small business community in San Francisco, its employees, and its customers; and

WHEREAS, that mandate specifically requires the Small Business Commission to review all legislation affecting small businesses and make recommendations to the Board of Supervisors; and

WHEREAS, that mandate specifically requires that the Small Business Commission review rules and regulations adopted by City departments that affect small businesses and recommend modifications that would promote the health of small businesses; and

WHEREAS, there are approximately 700 small businesses that are City licensed tobacco retailers; and

WHEREAS, San Francisco administers approximately 25 Tobacco Control Laws intended to protect communities and especially youth; and



WHEREAS, according to the Centers for Disease Control's Youth Risk Behavior Survey, tobacco use among San Francisco youth is at its lowest since 1997; and

WHEREAS, since implementation of the San Francisco Permit Density Cap, the number of tobacco retail permits has declined by 23%; and

WHEREAS, the Small Business Commission has reviewed of the BOS File Nos. 190312 Health Code - Restricting the Sale, Manufacture, and Distribution of Tobacco Products, Including Electronic Cigarettes and 170441 Health Code - Banning the Sale of Flavored Tobacco Products; and

WHEREAS, responsive to national spikes in use of e-cigarettes by youth, the legislative intent of both ordinances is to cede and prevent the consumption of e-cigarette products, and particularly those that have not undergone premarket review by the Federal Drug Administration; and

WHEREAS, the legislative intent of BOS File No. 190312 will be accomplished through a City wide ban on the sales of e-cigarette products by City licensed tobacco retailers, and by mail or via online sales to anyone in San Francisco; and

WHEREAS, the ban on the sales of flavored tobacco products by City licensed retailers has had a direct adverse effect on the economic health of the City licensed tobacco retailers and an additional e-cigarette ban would exacerbate it; and

WHEREAS, JUUL, an electronic cigarette manufacturing and distribution company is headquartered on San Francisco City property; and

WHEREAS, JUUL sells their product to tobacco retailers in 41 states where the minimum purchasing age for tobacco is 18; and

WHEREAS, JUUL's e-cigarette products account for a third of the total retail market and is valued at \$38 billion; and

WHEREAS, JUUL is categorized as a Wholesale Trade business and taxed as such by the City;

WHEREAS, the Chief of the Federal Drug Administration asserted that the dramatic spike of e-cigarette use by youth was driven in large part by JUUL; and



WHEREAS, BOS File No. 190311 was introduced with BOS File No. 190312; and

WHEREAS, the legislative intent of BOS File No. 190311 is to prohibit the sale, manufacture, and distribution of tobacco products, including electronic cigarettes, on City property; and

WHEREAS, despite being located on City property, BOS File No. 190311 would not impact JUUL headquarters; and

WHEREAS, in 2017 the Board of Supervisors passed a City wide ban on the sale of flavored tobacco, including menthol by licensed tobacco retailers; and

WHEREAS, there was both an effective and operative date included in the ban on the sale of flavored tobacco; and

WHEREAS, the approximately nine month span of time between the effective and operative date of the ban on the sale of flavored tobacco provided City licensed tobacco retailers ample opportunity to adjust to the new requirement and mitigate potential adverse economic consequences; therefore be it

RESOLVED, that the Small Business Commission requests that, in the spirit of equitable policy administration, and in light of JUUL being allowed to continue their operations on City property and thusly are enabled to continue the distribution of e-cigarettes- including flavored e-cigarettes, across the country, and to 18-21 year olds in 41 states sans City intervention, the Mayor and the Board of Supervisors administer economic mitigation measures in support of San Francisco small business retailers who are licensed to sell tobacco; and be it

FURTHER RESOLVED, that those mitigation measures should include: 1) a tobacco retail permit buy-back program at valuation; 2) a reassessment of Cigarette Litter Abatement Fee and the Deemed Approved Use fees which recognizes that licensed tobacco retailers will be reducing their tobacco inventories; and 3) an economic adjustment program similar to Healthy Retail SF which assists licensed tobacco retailers in diversifying their inventory and consumer offerings in order to remain competitive in light of artificial shifts in consumer demand; and 4) an effective and operative date for the legislation that will allow retailers with tobacco retail licenses a sufficient amount of time to reduce their e-cigarette inventory and adjust to the new requirement

