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May 29, 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 total number of tobacco retail permits has declined by 23%; and

WHEREAS, with the enactment of BOS File No. 151179, the City and County of San Francisco on March 11, 2016 amended, the legal age of selling tobacco products, including smokeless and electronic cigarettes from 18 to 21 years of age; and

WHEREAS, the Small Business Commission on January 11, 2016, unanimously support and recommend the Board of Supervisors adopt BOS File No: 151179; and

WHEREAS, on June 9, 2016, the State of California, amended the legal age of selling of all tobacco products, from 18 to 21 years of age; and

WHEREAS, by July 1, 2019, nine states will have amended the legal age to purchase tobacco products from 18 to 21 years of age; and

WHEREAS, as of July 1, 2019, of the remaining 41 states, 38 states the legal age is 18 years of age, and 3 states the legal age is 19 years of age; and

WHEREAS, on September 5, 2017 the City and County of San Francisco enacted BOS File No. 170441 Health Code - Banning the Sale of Flavored Tobacco Products; and

WHEREAS, the Small Business Commission passed a motion on September 24, 2018 recommending that the Office of Economic and Workforce Development and Department of Public health develop economic mitigation measures for licensed tobacco retailers who would be affected by the flavored tobacco ban;

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, the legislative intent of both ordinances is to cede and prevent the consumption of flavored tobacco and e-cigarette products, 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 18-21; and

WHEREAS, JUUL's 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; 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 which recognizes that licensed tobacco retailers will be reducing their tobacco product inventories; and 3) an economic adjustment program, to be developed by the Office of Economic and Workforce Development, the Small Business Development Center, and the Office of Small Business, 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. Any economic adjustment program that is developed should be presented to the Small Business Commission for their approval. And, the development of an economic adjustment program would not be contingent upon the passing of BOS File No. 190312. Such a program be implemented in a timely manner which would avert the closure of affected licensed tobacco retailers.

