Retail Tobacco Rules and Regulations: E-Cigarette Sales Restrictions

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Presentation Overview

- Tobacco Regulations in SF
- How to Comply
- E-Cigarette Sales Restrictions Roll Out
- Enforcement Process
SF Health Code, Article 19

- 19H – Tobacco permitting
- 19F – Smoking in enclosed areas
- 19P – Sales to 18, 19, and 20 year olds
- 19Q – Flavored tobacco

Recently Approved
19K (amendment) – No tobacco sales on city property
19R – Sales of unapproved E-cigarettes
19S – Sales & distribution of tobacco products
Health Equity
Tobacco Use, Access, & Audience

- Within 30 days prior to SF/San Mateo High Schoolers taking survey*, 20.8% reported using e-cigarettes and 41% used a tobacco product.
- 65.2% of California students think it’s easy to obtain e-cigarettes.
- People’s choice is e-cigarettes – ↑nicotine rates

*CDPH – 2017-2018 California Student Tobacco Survey
Effective January 29, 2020

19R – Directed at Tobacco Retailers

19S – Directed at Distributors and Manufacturers

1) Electronic Cigarettes that do not appear on any one of the FDA’s three Marketing Order lists, or on SFPDH’s List of Approved Electronic Cigarettes Pending FDA Posting, may not lawfully be sold in San Francisco or to a Person in San Francisco.

2) Two products approved – IQOS System + Marlbro Heatsticks

3) Eliminates all distribution of flavored tobacco products to persons in SF (i.e. direct and indirect sales).
Federal & State Vaping Bans

Trump Administration:
- Proposed January 2, 2020
- Only focuses on flavored tobacco products (i.e. cartridges) and exempts menthols and devices
- Temporary ban until approved by FDA

CA Senate Bill 793:
- Proposed January 6, 2020
- Bans all flavored tobacco products, including menthols
- May also ban the devices that deliver the nicotine product.
- Permanent ban
What is an Electronic Cigarette?

- Any device or delivery system sold in combination with nicotine for a single price which can be used to deliver to a person nicotine in aerosolized or vaporized form.

- Any component, part, or accessory of such a device that is used during the operation of the device when sold in combination with any liquid or substance containing nicotine.

- Any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form.
E-cigarettes DO NOT Include:

- Any device NOT sold in combination with any liquid or substance containing nicotine for a single price, or any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately.

- Any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use.
How do Tobacco Retailers, Distributors, and Manufacturers comply?

1) Do not sell or distribute any E-cigarettes without a Market Order: https://www.fda.gov/tobacco-products/premarket-tobacco-productapplications/premarket-tobacco-product-marketing-orders

2) Check SFDPH’s list of approved e-cigarettes which have not yet been posted to the FDA website.
E-Cigarette Sales Restrictions Roll Out

SFHC, Article 19R & 19S Rules & Regulations - October 2019 – January 2020

1) Drafting Rules & Regulations for E-cigarette sales restrictions
2) Post for 30-day public comment
3) Finalized by January 20, 2019

Education & Outreach – Dec 2018 – Jan 2019

1) Mail Informational Sheet
2) Email notification to 70% of Permittees, city agencies and stakeholders
3) E-Cig website
4) Distributor outreach via email and mail
5) Conduct education site visits to all Tobacco Only Shops (~70)
Enforcement Process

Unapproved E-Cig Sales

- 1\textsuperscript{st} time violation - 72 hours to remove product from shelf
- Permit suspension for 2\textsuperscript{nd} occurrence and any subsequent occurrence
- Referral to City Attorney when violation is unabated

<table>
<thead>
<tr>
<th>Number of Times the Violation Occurred</th>
<th>Permit Suspension Period*</th>
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<tbody>
<tr>
<td>1\textsuperscript{st} violation</td>
<td>10 days (unless product(s) have been removed within 72 hours)</td>
</tr>
<tr>
<td>2\textsuperscript{nd} violation</td>
<td>20 Days</td>
</tr>
<tr>
<td>3\textsuperscript{rd} violation</td>
<td>40 Days</td>
</tr>
<tr>
<td>4\textsuperscript{th} and each violation afterwards</td>
<td>90 Days</td>
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Economic Mitigation Work Group

Members:
- Chamber of Congress
- Office of Small Business
- Small Business Commissioner
- Board of Supervisors
- San Francisco Small Business Development Center
- Tobacco Retailer
- Merchant Association
- Office of Economic Workforce Development

Mitigation Examples:
- Relinquishing tobacco retail licenses/selling licenses back to the City
- Transitioning smoke shops/vape shops to selling cannabis
- Commercial lease assistance
- Reassessing what anchor products draw customers in (i.e., clipper cards, tour tickets)
- Reassessment of city levied fees
- More investment in Healthy Retail SF
THANK YOU!