

ARTICLE 46:
PROHIBITING SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS EXCEPT IN PLACES TO WHICH MINORS HAVE NO ACCESS

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SEC. 4600. TITLE.

This Article shall be known as the Prohibition of Self-Service Merchandising of Tobacco Products Ordinance.

(Added by Ord. 446-96, App. 11/27/96)

SEC. 4600.1. FINDINGS AND PURPOSES.

The Board of Supervisors does hereby find that:

(a) The United States Surgeon General and the United States Department of Health and Human Services have found that a majority of those Americans who die of tobacco-related diseases became addicted to the nicotine in tobacco products as adolescents, before the age of legal consent;

(b) Studies have shown that seventy-five percent of current adult smokers started before the age of 18;

(c) The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug, and has identified nicotine addiction as the most widespread example of drug dependence in the U.S.;

(d) The National Institute on Drug Abuse has found that tobacco use by adolescents precedes and is predictive of adolescent illicit drug use;

(e) State law (Penal Code Sec. 308) prohibits and penalizes the sale or furnishing of cigarettes and other tobacco products to minors, yet minors continue to purchase, steal or otherwise obtain tobacco products at alarming rates;

(f) In compliance with federal regulations, a new state law known as the Stop Tobacco Access to Kids Enforcement Act or STAKE Act (Bus. and Prof. Code, Sec. 22950, et seq.) requires that tobacco retailers post a notice at each point of purchase stating that selling tobacco products to persons under 18 is illegal and subject to penalties. Tobacco retailers also are required to check the identification of tobacco purchasers if they reasonably appear to be under 18 years of age. The STAKE Act also requires state authorities to conduct random inspections to detect illegal sales of tobacco products and imposes civil penalties thereon;

(g) Since minors are more likely to attempt to buy or steal cigarettes and other tobacco products when these items are accessible in self-service displays, banning self-service merchandising of tobacco products will help prevent routine violations of state law;

(h) State law does not regulate the manner in which tobacco products are displayed and made available for sale;

(i) Effective August 1997, the new Federal FDA Regulations (Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents) prohibit the sale of cigarettes and smokeless tobacco products through self-service displays, except in facilities where individuals under 18 are not present or permitted at any time.

Accordingly, the Board of Supervisors finds and declares that it is in the public interest and welfare to prohibit the self-service merchandising of tobacco products.

The Board of Supervisors further finds that this Article is meant to complement and effectuate state law prohibiting the sale of tobacco products to minors.

(Added by Ord. 446-96, App. 11/27/96)

SEC. 4600.2. DEFINITIONS.

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

(a) "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making or nonprofit purposes, including retail establishments where goods or services are sold.

(b) "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(c) "Self-service merchandising" means the open display of tobacco products to which the public has access without the intervention

of the vendor or a store employee.

(d) "Tobacco product" means any tobacco cigarette or smokeless tobacco product.

(e) "Tobacco retailer" shall mean any person or business that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.

(f) "Vendor-assisted" means the customer has no access to the tobacco product without the assistance of a store owner or employee.

(Added by Ord. 446-96, App. 11/27/96)

SEC. 4600.3. PROHIBITION OF SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS EXCEPT IN PLACES TO WHICH MINORS HAVE NO ACCESS.

No person, business, tobacco retailer or other establishment subject to this Article shall sell, permit to be sold, offer for sale or display for sale any tobacco product by means of self-service merchandising or by means other than vendor-assisted sales, unless access to the premises by persons under 18 years of age is prohibited by law.

(Added by Ord. 446-96, App. 11/27/96)

SEC. 4600.4. ENFORCEMENT AND PENALTIES.

(a) This Article shall be administered and enforced by the Chief of Police, in conjunction with the City Attorney. The Police Department shall develop guidelines, as appropriate, to ensure proper implementation and enforcement of this Article.

(b) The Chief of Police shall enforce Section 4600.3 as follows:

(1) The Chief of Police shall receive and review complaints relating to violations of this Article;

(2) The Chief of Police shall act upon such complaints, within 30 days of receipt, by serving notice requiring correction of any violation of this Article upon the person, business, tobacco retailer, or owner, manager or operator of the establishment responsible for the self-service merchandising of tobacco products prohibited by this Article;

(3) If additional resources are needed, the Chief of Police may enter into agreements with appropriate departments to receive and review complaints and, within 30 days of receipt, to serve notice requiring correction of any violation of this Article upon the person, business, tobacco retailer, or owner, manager or operator of the establishment responsible for the self-service merchandising of tobacco products prohibited by this Article;

(4) Any person who fails or refuses to comply with the notice within the time period specified is subject to either a criminal action for an infraction or a civil action brought by the City Attorney.

(c) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this Article who violates or refuses to comply with any provision of this Article shall be deemed guilty of an infraction, and shall be deemed guilty of a separate offense for each day such violation or refusal shall continue. Every violation is punishable by:

(1) A fine, of at least \$25 but not exceeding \$100 and/or five days of community service, for the first violation;

(2) A fine, of at least \$100 but not exceeding \$175 and/or 10 days of community service, for a second violation of this Article within five years of the first violation;

(3) A fine, of at least \$175 but not exceeding \$250 and/or 15 days of community service, for a third violation of this Article within five years of the first violation.

(d) The City Attorney may maintain an action for injunction to enforce the provisions of this Article, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation pursuant to subdivision (e).

(e) Any person who violates or refuses to comply with the provisions of this Article shall be liable for a civil penalty of \$100 for each violation, which penalty shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco. The person against whom a penalty is assessed also shall be liable for the costs of attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this Article.

(f) For purposes of determining liability of persons, firms or corporations controlling franchises or business operations in multiple locations, each individual franchise or business location shall be deemed a separate entity. Violations accumulated and penalties assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location.

(Added by Ord. 446-96, App. 11/27/96)

SEC. 4600.5. OTHER APPLICABLE LAWS.

This Article shall not be interpreted or construed to permit tobacco vending machines or distribution of tobacco product samples where they are otherwise restricted by other applicable laws.

(Added by Ord. 446-96, App. 11/27/96)

SEC. 4600.6. VOLUNTARY COMPLIANCE.

In order to encourage and assist voluntary compliance with this Article, and subject to availability of funds, the City or its designee may conduct informational activities to notify and educate tobacco retailers and the public of this Article, including the following:

(1) Publication of this Article in local newspapers;