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August 7, 2019

VIA ELECTRONIC MAIL: PUBLICATIONS@SFGOV.ORG

Members of the Ballot Simplification Committee c/o Barbara Carr
Department of Elections
City and County of San Francisco
1 Dr. Carlton B. Goodlet Place, Room 48
San Francisco, CA 94102

RE: Request for Reconsideration—Approved Digest for Vapor Products Initiative

Dear Committee Members:

On behalf of our client, the SF Kids vs. Big Tobacco coalition, we write to respectfully request reconsideration of several provisions of the approved digest. We appreciate your thoughtful consideration of our comments at the initial meeting this week.

The first two sentences that we request that the Committee reconsider are in “The Way It Is Now” Section of the Digest.

First, we request that you revise the sentence that currently reads “As of July 2019, the FDA has not completed a review for any electronic cigarette products,” to instead read “As of July 2019, no electronic cigarette company has submitted an application to the FDA for pre-market review.” The reason that we request this change is because the current language is misleading. The current language suggests that the FDA is possibly delaying pre-market review, when, in fact, no company, including Juul, has submitted an application for pre-market review. The FDA has not, in fact, had an opportunity to complete this required review and the language in the Digest should make that clear.

The second sentence we request that you revise is the sentence that currently reads “The City would regulate the sale of authorized electronic cigarettes as follows.” As drafted, use of the word “would” in this sentence suggests that the laws outlined in the bullet points that follow are not current law. This is, of course, untrue. We suggest revising this sentence to “The City regulates the sale of authorized electronic cigarettes as follows” to remove this confusion.

Next, we request that you reconsider the language currently used in the “Yes Vote Means” section of the Digest. The current version of the Digest provides: “If you vote ‘yes,’ you want to allow electronic cigarettes to be sold in the City regardless of

FDA authorization and adopt new regulations on the sale, manufacturing, distribution and advertising of electronic cigarettes in San Francisco.”

The language we propose is: “If you vote ‘yes,’ you want to overturn the City law that suspends the sale of electronic cigarettes that lack required authorization by the FDA, allow electronic cigarettes to be sold in the City regardless of FDA authorization, and adopt new regulations on the sale, manufacturing, distribution and advertising of electronic cigarettes in San Francisco.”

Alternatively, we suggest the following language: “If you vote ‘yes,’ you want to allow electronic cigarettes to be sold in the City regardless of FDA authorization, adopt new regulations on the sale, manufacturing, distribution and advertising of electronic cigarettes in San Francisco, and overturn the City law that suspends the sale of electronic cigarettes that lack required authorization by the FDA.”

The reason we are requesting this change is because we think it is crucial for voters to understand that in voting yes on this measure, they are overturning existing law. While the Proposal section of the Digest makes this clear, we also think that the “Yes Vote Means” section of the Digest needs to plainly spell this out. Juul has expressly stated that overturning existing law is the primary goal of this measure. Ashley Gould, Chief Administrative Officer of JUUL Labs, Inc. provided in the declaration she submitted to the Ballot Simplification Committee: “What the Initiative was meant to supersede—what is irreconcilable with the Initiative—was the complete prohibition on the sale of vapor products that was included in Sections 19R.2 and 19S.2, subdivision (b), of the Health Code, adopted by the Board of Supervisors in late June.” A “yes” vote on the measure is a vote to overturn existing law, and voters should be clear on this.

Finally, we request that you revise the “No Vote Means” section of the Digest. The current “No Vote Means” section of the Digest currently provides: “If you vote “no,” you do not want to make these changes.” While we understand from reviewing prior Ballot Digests that the committee often employs this language or similar language in the “no,” section of the Digest, we think that given the complex nature of this measure, including additional information on the “no” section of the Digest is merited.

We suggest changing this language to read: “If you vote no, you want to uphold current laws regulating the sale of electronic cigarettes.”

We appreciate your consideration of these changes.

Very truly yours,

OLSON HAGEL & FISHBURN LLP



LANCE H. OLSON



EMILY A. ANDREWS

Vapor Products*

Digest by the Ballot Simplification Committee

Status: Approved Digest
On: Tuesday, August 6, 2019
Members: Packard, Anderson, Raveche

Deadline to Request Reconsideration: 4:30 p.m. on Wednesday, August 7

The Way It Is Now: The City and the State of California regulate the sale of tobacco products. The term “tobacco products” includes vapor products such as electronic cigarettes, their cartridges and other parts, and liquid nicotine. Electronic cigarettes are battery-operated devices that vaporize liquid nicotine and deliver it to the user.

City and State laws prohibit the sale of electronic cigarettes in San Francisco in the following ways:

- The City and State prohibit the retail sale of tobacco products to people under age 21 and the State prohibits the sale of tobacco products on the internet to people under age 21.
- The City prohibits the sale of electronic cigarettes everywhere the sale of other tobacco products is prohibited.
- The City prohibits the sale of flavored tobacco products, including flavored electronic cigarettes.
- The City prohibits the sale, manufacture and distribution of electronic cigarettes and other tobacco products on City property.
- The City prohibits advertising of certain tobacco products on billboards or other publicly visible signs in San Francisco and on City property. Federal and State law impose additional advertising restrictions on tobacco products.

The U.S. Food and Drug Administration (FDA) regulates tobacco products. Beginning in late January 2020, the City will suspend the sale of electronic cigarettes that have not then gone through required pre-market review by the FDA. **As of July 2019, the FDA has not completed a review for any electronic cigarette products no electronic cigarette company has submitted an application to the FDA for pre-market review.**

The City **would regulate** the sale of authorized electronic cigarettes as follows:

- Tobacco retailers must obtain permits from the City and the State, and tobacco distributors must obtain a license from the State.
- State law requires tobacco retailers to check the identification of any customer who appears to be under age 21, and to store electronic cigarettes where customers cannot access them without assistance.
- State law requires sellers and distributors of electronic cigarettes on the internet to verify that customers are at least 21 years old.

The Proposal: Proposition_ would authorize and regulate the retail sale, availability and marketing of electronic cigarettes in San Francisco. The measure would:

- Repeal the City law that suspends the sale of electronic cigarettes that lack required authorization by the FDA;
- Partially repeal City law to allow the sale, manufacture and online retail sale of electronic cigarettes on City property;

**Working title, for identification only. The Director of Elections determines the title of each local ballot measure; measure titles are not considered during Ballot Simplification Committee meetings.*

- May repeal other City laws that apply to electronic cigarettes, including the City law that prohibits the sale of flavored electronic cigarettes.

Proposition ___ would repeal some City laws regarding electronic cigarettes and impose new regulations on the sale and distribution of electronic cigarettes in San Francisco as follows:

- Require retailers to scan photo identification to verify that customers are 21 years or older;
- Prohibit retailers from selling more than two electronic cigarette devices or five finished product packages of liquid nicotine in each transaction; and
- Require retailers to train their employees twice a year.

Proposition ___ would also require individuals and entities that sell more than 100 electronic cigarettes per year on the internet to San Francisco customers to:

- Obtain a permit from the City;
- Verify that customers are at least 21 years old; and
- Sell no more than two electronic cigarette devices or 60 milliliters of liquid nicotine, per month, to each customer.

Proposition ___ would prohibit advertising electronic cigarettes designed to appeal to minors or using an advertising medium known to be seen primarily by people under 21 years old.

A "YES" Vote Means: If you vote "yes," you want to allow electronic cigarettes to be sold in the City regardless of FDA authorization, adopt new regulations on the sale, manufacturing, distribution and advertising of electronic cigarettes in San Francisco and overturn the City law that suspends the sale of electronic cigarettes that lack required authorized by the FDA.

OR, ALTERNATIVELY:

A "YES" Vote Means: If you vote "yes," you want to overturn the City law that suspends the sale of electronic cigarettes that lack required authorization by the FDA, allow electronic cigarettes to be sold in the City regardless of FDA authorization, and adopt new regulations on the sale, manufacturing, distribution and advertising of electronic cigarettes in San Francisco.

A "NO" Vote Means: If you vote "no," you want to uphold current laws regulating electronic cigarettes in San Francisco. do not want to make these changes.