



CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR

OFFICE OF SMALL BUSINESS
SMALL BUSINESS COMMISSION
REGINA DICK-ENDRIZZI, DIRECTOR

July 25, 2019

John Arntz
Director
Department of Elections
City Hall, Room 48
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94117

Dear Director Arntz,

This letter is the Office of Small Business (OSB) analysis of the “VAPOR PRODUCT” measure to the Ballot Simplification Committee.

Currently there is approximately 815 City and County of Department of Public Health tobacco sales permit holders and roughly 92% of these permit holders are small businesses. Currently tobacco sales permit holders currently are able to sell e-cigarettes or nicotine vapor products to individuals 21 or older. Beginning January 1, 2020, Ordinance No: 122-19 will prohibit current City and County of Department of Public Health tobacco sales permit holders from selling and distributing e-cigarettes products that do not have FDA premarket approval.

This ballot measure as drafted and passed by the voters will allow the continuation of City and County of Department of Public Health tobacco sales permit holders to sell e-cigarettes. The measure does not reverse the ban of sales flavored tobacco products. The ballot measures retains the requirement for the permit holder to sell only to individuals that are 21 and older. The requirement for the permit holder to purchase to a photo identification scanner will have a one-time expense that is approximately \$900.00.

The ballot measure does place a requirement of the number of products that the permit holder can sell at each transaction. This limitation in sales does will result in some reduction of revenue and sales for the permit holders, but it is a financial impact that is manageable for the small and all current tobacco permit holders.

The requirement to provide 1 hour of retail training twice a year to employees is manageable and a good procedure to ensure the retailer maintains the highest of standards necessary to ensure all sellable tobacco and vapor products are sold to individuals that are 21 and older.

This ballot measure is establishing new and first time regulations to online retailers, manufacturers and wholesalers. Very rarely does government attempt to apply the same regulatory requirements to online and app based businesses as is done to brick and mortar businesses. Not only is this very important to closing the loophole for easy access of e-cigarettes and vapor products for individuals under 21, it also levels the economic playing field for San Francisco's brick and mortar "establishments". One of the most critical components to this ballot measure is the creation of nearly similar regulatory requirements for online-retailers as there are for brick and mortar "establishment" retailers. This is done by:

- Requiring online retailers to obtain a tobacco sales permit from the Department of Public Health;
- Requirement so electronic age verification at the time of purchase;
- Requirement that limits the amount of e-cigarette or nicotine –containing liquids that can be sold at any one time;
- Placing advertising and marketing restrictions and a violation of this regulation that result in penalties and fines.

Where there are differences in brick and mortar "establishment" and online retailers is:

- A photo ID does not have to scanned at the time of the delivery of the purchase to insure the product is being delivered to the purchaser or an individual that is 21 or older;
- Employees of an online retailer are not required to do the twice a year 1 hour training.

The regulations applied to online retailers, manufacturers and wholesalers in this ballot measure are more stringent than current regulations and in Ordinance No: 122-19.

It is important for both San Francisco's small business and the City's youth to do the most we can to limit youth <21, in accessing tobacco. This ballot measure if passed takes good strong measures in doing so with minimal financial impact to San Francisco's tobacco sales permit holders while retaining adults in San Francisco the ability to continue to purchase these produces, and it strongly closes the online loopholes and ease of youth access through new online regulations.

Should the ballot measure not pass it will:

- Allow Ordinance No: 122-19 to go into effect January 1, 2020, which will prevent San Francisco brick and mortar businesses from selling e-cigarettes and nicotine containing liquids, which can significantly impact small tobacco sales permit holders;
- Prevent adults 21 and older from purchasing e-cigarettes;
- Will not require online retailers from obtaining a tobacco sales permit;
- Will not provide the Department of Public Health the tools it needs to regulation online sales to individuals <21;
- Will not provide the Department of Public Health the tools it needs to regulation advertising and marketing to youth.

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Thank you to you, and the Ballot Simplification Committee for your consideration of the Office of Small Business analysis to the “Vapor Products” ballot measure. I will be happy to answer any questions you may have or attend any Committee meeting as requested.

Sincerely,

A handwritten signature in cursive script, reading "Regina Dick-Endrizzi".

Regina Dick-Endrizzi
Director, Office of Small Business