



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
March 11, 2014

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Susan Wengraf & Laurie Capitelli  
Subject: Prohibiting the Sale of Tobacco Products in Establishments with Pharmacies

RECOMMENDATION

Request that the City Manager draft an ordinance that would prohibit the sale of tobacco and tobacco related products in stores that also sell prescription medications and return to council by June, 2014 for City Council consideration.

FINANCIAL IMPLICATIONS:

Staff time

BACKGROUND

Cigarette smoking accounts for approximately 450,000 deaths annually in the U.S. The increased risks of coronary disease, stroke, and cancer from smoking are well established in the medical literature.

Because cigarettes are known to cause many deadly diseases, it is inappropriate for them to be sold in stores that sell prescription drugs that treat disease and that promote health.

The neighboring cities of San Francisco and Richmond, Ca. already have ordinances that prohibit the sale of tobacco products in establishments with pharmacies. The ordinance in San Francisco was challenged by Phillip Morris and Safeway and in both instances the courts ruled in favor of the city of San Francisco.

In a bold move, CVS recently announced that all of their stores would stop selling tobacco products. Rather than wait for others to follow, the City of Berkeley should adopt an ordinance that would prohibit the sale of tobacco and tobacco related products in all establishments that sell prescription medications and impose penalties on those that violate the law.

This ordinance reflects our commitment to protecting and improving the health of our citizenry.

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160

**ORDINANCE NO. 38-09 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND ADDING SECTION 7.107 TO THE RICHMOND MUNICIPAL CODE TO PROHIBIT DRUG STORES CONTAINING PHARMACIES FROM SELLING TOBACCO PRODUCTS.**

The City Council of the City of Richmond do ordain as follows:

**SECTION 1. Findings.**

The City Council hereby finds and declares as follows:

1. Tobacco is the leading cause of preventable death in the United States and the leading risk factor contributing to the burden of disease in the world's high-income countries;
2. In addition to its health impact, tobacco related death and disease has an economic impact. In 1999, the economic costs of smoking in California were estimated to be \$475 per resident or \$3,331 per smoker, for a total of nearly \$15.8 billion in smoking-related costs (1999 dollars). Those same costs in 2008 dollars would be \$614 per resident or \$4,310 per smoker for a total of nearly \$20.4 billion dollars;
3. The American Diabetes Association's standards of medical care in diabetes call for smoking cessation as well as prescription drug therapy;
4. Through the sale of tobacco products, drug stores convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who generally patronize pharmacies for health care services;
5. In 1970, the American Pharmaceutical Association stated that mass display of cigarettes in pharmacies is in direct contradiction to the role of a pharmacy as a public health facility;
6. The Tobacco Education and Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores containing pharmacies;
7. A majority (78%) of independently owned pharmacies in California have become tobacco free; however, tobacco products are still sold by 94% of chain drug stores;
8. Of the independently owned pharmacies that are tobacco-free, 88% report they have experienced either no loss or an increase in business since removing tobacco from their shelves;
9. An overwhelming percentage of California consumers (96.8%) indicate that they would continue to patronize their pharmacy or drug store as often or more often if it stopped selling tobacco products;
13. A large majority (72.3%) of California consumers are opposed to the sale of tobacco products in drug stores and nearly one-half of California smokers (49.7%) disagree or strongly disagree that tobacco products should be sold through drug stores;
14. Only 13.2% of chain drug store pharmacists are in favor of the sale of tobacco products in drug stores;
15. In a 2003-2004 national survey of pharmacy students, nearly three-quarters (71%) of those surveyed were against tobacco sales in pharmacies. These findings were aligned with the 2003 resolution of the American Association of Colleges of Pharmacy that encourages pharmacy schools to use only training sites that do not sell tobacco products;
16. Drugstores are among the most accessible and trusted sources of health information

among the public;

17. Clinicians can have a significant effect on smokers' probability of quitting smoking;

18. Most health care institutions have adopted policies that have banned tobacco sales and created smoke-free environments. In spite of numerous resolutions and recommendations by state and national pharmacy organizations calling for pharmacies to stop selling tobacco, some community pharmacies in the United States continue to sell tobacco products.

19. Prescription drug sales for chain drug stores represent a significantly higher percentage of total sales than for grocery stores and big box stores that contain pharmacies. According to the 2007 Rite Aide Annual Report, prescription drugs sales represented 63.7% of total sales in fiscal 2007. Walgreen's 2007 Annual Report documented prescription sales as approximately 65% of net sales that year. Pharmacy sales at Safeway have been estimated at 7.5% of annual volume. Costco's prescription sales generated 1.5% of total revenue in 2002. (Findings 1-19 are based primarily on the article "Tobacco sales in pharmacies: time to quit," Hudmon et al. *Tob Control*, 2006; 15: 35-38.)

**SECTION 2.** The Richmond Municipal Code is hereby amended by adding Section 7.107 to the Richmond Municipal Code as follows:

**7.107.10 Definitions**

For purposes of this chapter, the following words, terms and phrases shall have the meanings given below:

"City Manager" shall mean the Richmond City Manager or his or her designee.

"Drug Store" shall mean any business or other commercial enterprise that is (1) licensed as a pharmacy by the State of California pursuant to the California Business and Professions Code, and (2) identified as a Drug Store with the California Board of Equalization, or with the Richmond Finance Department, or is otherwise commonly known as a drugstore.

"Tobacco Product" as used in this Chapter shall mean: (1) any substance containing tobacco leaf, including, but not limited, to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

**7.107.020 Prohibition Against Tobacco Product Sales at Drug Stores**

No Drug Store shall sell, or otherwise distribute, tobacco products.

**7.107.030 Penalties and Enforcement**

The City may seek compliance with this Chapter by any remedy allowed under the Richmond Municipal Code, including, but not limited to, revocation of Tobacco License pursuant to section 7.106.120, administrative fines (Richmond Municipal Code Chapter 2.62), or the penalties set forth in section 1.04.100 of the Richmond Municipal Code.

**7.107.040 Expiration of License to Sell Tobacco**

Any license to sell tobacco issued to a pharmacy, as defined by California Business and Professions Code Section 4037, pursuant to Chapter 7.106 shall expire on January 1, 2010, and shall not be renewed if sales of tobacco by that pharmacy are prohibited under this Chapter.

**7.107.050 Authority to Adopt Rules and Regulations**

The City Manager may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Article.

**7.107.060 Preemption**

In adopting this Chapter, the Richmond City Council does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed, or expressly authorized by federal or state law. Further, in adopting this Article, Richmond City Council does not intend to prohibit that which is prohibited by federal or state law.

**7.107.070 City Undertaking Limited to Promotion of General Welfare**

In undertaking the adoption and enforcement of this Article, the Richmond City Council is assuming an undertaking only to promote the general welfare. The City does not intend to impose the type of obligation that would allow a person to sue for money damages for an injury that the person claims to arise as a result of a City officer or employee taking or failing to take an action with respect to any matter covered by this Chapter.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such division shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

**SECTION 4. Effective date.** This ordinance shall become effective 60 days after the date of its adoption.

\*\*\*\*\*

First read at a regular meeting of the Council of the City of Richmond held, October 20, 2009, and finally passed and adopted at a regular meeting thereof held November 17, 2009, by the following vote:

AYES: Councilmembers Butt, Ritterman, Rogers, and Viramontes

NOES: Vice Mayor Lopez

ABSTENTIONS: Councilmember Bates

ABSENT: Mayor McLaughlin

DIANE HOLMES  
Clerk of the City of Richmond

[SEAL]

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

RANDY RIDDLE  
City Attorney

I certify that the foregoing is a true copy of **Ordinance No. 38-09**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on November 17, 2009.

1 [Prohibiting Pharmacies From Selling Tobacco Products.]

2  
3 **Ordinance amending the San Francisco Health Code by amending Section 1009.53 and**  
4 **adding Section 1009.60 and Article 19J, to prohibit pharmacies from selling tobacco**  
5 **products.**

6 Note: Additions are single-underline italics Times New Roman;  
7 deletions are ~~strikethrough italics Times New Roman~~.  
8 Board amendment additions are double underlined.  
9 Board amendment deletions are ~~strikethrough-normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings.

11 The Board of Supervisors hereby finds and declares as follows:

- 12 1. Tobacco is the leading cause of preventable death in the United States and the  
13 leading risk factor contributing to the burden of disease in the world's high-income countries;
- 14 2. In addition to its health impact, tobacco related death and disease has an  
15 economic impact. In 1999, the economic costs of smoking in California were estimated to be  
16 \$475 per resident or \$3,331 per smoker, for a total of nearly \$15.8 billion in smoking-related  
17 costs (1999 dollars). Those same costs in 2008 dollars would be \$614 per resident or \$4,310  
18 per smoker for a total of nearly \$20.4 billion dollars;
- 19 3. Twenty-three percent of San Franciscans have been diagnosed with high blood  
20 pressure. The National Heart Lung and Blood Institute's guidelines for the use of prescription  
21 drugs in the treatment of high blood pressure call for smoking cessation;
- 22 4. Twenty percent of San Franciscans have been diagnosed with high cholesterol.  
23 The National Heart Lung and Blood Institute's guidelines for the use of prescription drugs in  
24 the treatment of high cholesterol call for smoking cessation;
- 25

1           5.     The American Diabetes Association's standards of medical care in diabetes call  
2 for smoking cessation as well as prescription drug therapy;

3           6.     Thirteen percent of San Franciscans have asthma. The National Heart Lung  
4 and Blood Institute's guidelines for the use of prescription drugs in the treatment of asthma  
5 call for avoidance of tobacco smoke;

6           7.     Through the sale of tobacco products, pharmacies convey tacit approval of the  
7 purchase and use of tobacco products. This approval sends a mixed message to consumers  
8 who generally patronize pharmacies for health care services;

9           8.     In 1970, The American Pharmaceutical Association stated that mass display of  
10 cigarettes in pharmacies is in direct contradiction to the role of a pharmacy as a public health  
11 facility;

12          9.     The Tobacco Education and Research Oversight Committee for California, as  
13 well as the American Pharmacists Association, the California Pharmacists Association, and  
14 the California Medical Association have called for the adoption of state and local prohibitions  
15 of tobacco sales in drugstores and pharmacies;

16          10.    A majority (78%) of independently owned pharmacies in California have become  
17 tobacco free; however, tobacco products are still sold by 94% of chain drugstores;

18          11.    Of the independently owned pharmacies that are tobacco-free, 88% report they  
19 have experienced either no loss or an increase in business since removing tobacco from their  
20 shelves;

21          12.    An overwhelming percentage of California consumers (96.8%) indicate that they  
22 would continue to patronize their pharmacy or drugstore as often or more often if it stopped  
23 selling tobacco products;

1           13. A large majority (72.3%) of California consumers are opposed to the sale of  
2 tobacco products in drugstores and nearly one-half of California smokers (49.7%) disagree or  
3 strongly disagree that tobacco products should be sold through drugstores;

4           14. Only 13.2% of chain drugstore pharmacists are in favor of the sale of tobacco  
5 products in drugstores;

6           15. In a 2003-2004 national survey of pharmacy students, nearly three-quarters  
7 (71%) of those surveyed were against tobacco sales in pharmacies. These findings were  
8 aligned with the 2003 resolution of the American Association of Colleges of Pharmacy that  
9 encourages pharmacy schools to use only training sites that do not sell tobacco products;

10          16. Pharmacies and drugstores are among the most accessible and trusted sources  
11 of health information among the public;

12          17. Clinicians can have a significant effect on smokers' probability of quitting  
13 smoking;

14          18. Most health care institutions have adopted policies that have banned tobacco  
15 sales and created smoke-free environments. In spite of numerous resolutions and  
16 recommendations by state and national pharmacy organizations calling for pharmacies to stop  
17 selling tobacco, some community pharmacies in the United States continue to sell tobacco  
18 products.

19          19. A study of 100 randomly selected San Francisco pharmacies found that in 2003,  
20 61% of pharmacies sold cigarettes, significantly less compared to 89% of pharmacies in 1976.  
21 Most of this decrease was among independently owned pharmacies.

22          20. In a 2003 study of San Francisco pharmacies' merchandising of cigarettes, 84%  
23 of pharmacies selling cigarettes displayed tobacco advertising.

1           21. Prescription drug sales for chain drugstores represent a significantly higher  
2 percentage of total sales than for grocery stores and big box stores that contain pharmacies.  
3 According to the 2007 Rite Aide Annual Report, prescription drugs sales represented 63.7%  
4 of total sales in fiscal 2007. Walgreen's 2007 Annual Report documented prescription sales as  
5 approximately 65% of net sales that year. Pharmacy sales at Safeway have been estimated  
6 at 7.5% of annual volume. Costco's prescription sales generated 1.5% of total revenue in  
7 2002.

8           Section 2. The San Francisco Health Code is hereby amended by amending Section  
9 1009.53 and adding Section 1009.60 and Article 19J, to read as follows:

10           **SEC. 1009.53. APPLICATION PROCEDURE: INSPECTION OF PREMISES;  
11 ISSUANCE AND DISPLAY OF PERMIT.**

12           (a) Application. An application for a tobacco sales permit shall be submitted in the  
13 name of the person(s) proposing to engage in the sale of tobacco products and shall be  
14 signed by each person or an authorized agent thereof. The application shall be accompanied  
15 by the appropriate fees as described in section 35 of the San Francisco Business and Tax  
16 Regulations Code. A separate application is required for each location where tobacco sales  
17 are to be conducted. All applications shall be submitted on a form supplied by the Department  
18 and shall contain the following information:

- 19           1. The name, address, and telephone number of the applicant;
- 20           2. The establishment name, address, and telephone number for each location for  
21 which a tobacco sales permit is sought;
- 22           3. Such other information as the Director deems appropriate, including the applicant's  
23 type of business, and whether the applicant has previously been issued a permit under this  
24 Article that is, or was at any time, suspended or revoked.

1 (b) Inspection by Director. Upon receipt of a completed application and fees, the  
2 Director may inspect the location at which tobacco sales are to be permitted. The Director  
3 may also ask the applicant to provide additional information that is reasonably related to the  
4 determination whether a permit may issue.

5 (c) Issuance of Permit. If the Director is satisfied that the applicant has met the  
6 requirements of this Article and that issuance of the permit will not violate any law, the  
7 Department shall issue the permit. No permit shall issue if the Director finds that the applicant  
8 is in violation of San Francisco Health Code section 1009.1 (regulating cigarette vending  
9 machines), ~~or~~ San Francisco Police Code section 4600.3 (regulating the self-service  
10 merchandising of tobacco products), or if the applicant is a pharmacy prohibited from selling  
11 tobacco products under Article 19J. No permit shall issue if the application is incomplete or  
12 inaccurate.

13 (d) Display of Permit. Each permittee shall display the permit prominently at each  
14 location where tobacco sales occur. No permit that has been suspended shall be displayed  
15 during the period of suspension. A permit that has been revoked is void and may not be  
16 displayed.

17  
18 **SEC. 1009.60. CONDUCT VIOLATING TOBACCO CONTROL LAWS**

19 (a) Upon a decision by the Director that the permittee or the permittee's agent or employee has  
20 engaged in any conduct that violates local, state, or federal law applicable to tobacco products or  
21 tobacco sales, the Director may suspend a tobacco sales permit as set forth in section 1009.66, impose  
22 administrative penalties as set forth in section 1009.67, or both suspend the permit and impose  
23 administrative penalties.

1           **(b) The Director shall commence enforcement of this section by serving either a notice of**  
2 **correction under section 1009.68 of this Article or a notice of initial determination under section**  
3 **1009.69 of this Article.**

4  
5           **ARTICLE 19J: PROHIBITING PHARMACIES FROM SELLING TOBACCO PRODUCTS**

6           **SEC. 1009.91. DEFINITIONS.**

7           **(a) "Big Box Store" shall mean a single retail establishment occupying an area in excess of**  
8 **100,000 gross square feet.**

9           **(b) "Director" shall mean the Director of the Department of Public Health or his or her**  
10 **designee.**

11           **(c) "General Grocery Store" shall have the same meaning as set forth in Planning Code**  
12 **Section 790.102(a) or any successor provisions.**

13           **(d) "Person" shall mean any individual person, firm, partnership, association, corporation,**  
14 **company, organization, or legal entity of any kind.**

15           **(e) "Pharmacy" shall mean a retail establishment in which the profession of pharmacy by a**  
16 **pharmacist licensed by the State of California in accordance with the Business and Professions Code is**  
17 **practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods**  
18 **in addition to prescription pharmaceuticals. For purposes of this Article, "pharmacy" includes retail**  
19 **stores commonly known as drugstores.**

20           **(f) "Tobacco Product" shall mean any substance containing tobacco leaf, including but not**  
21 **limited to cigarettes, cigars, pipe, tobacco, snuff, chewing tobacco, and dipping tobacco.**

22  
23           **Sec. 1009.92. PROHIBITION AGAINST TOBACCO PRODUCT SALES AT**  
24 **PHARMACIES.**

1 No person shall sell tobacco products in a pharmacy, except as provided in Sec. 1009.93.

2  
3 **Sec. 1009.93. EXCEPTIONS.**

4 The prohibition against tobacco sales at pharmacies in Section 1009.92 shall not apply to:

5 (a) General Grocery Stores.

6 (b) Big Box Stores.

7  
8 **Sec. 1009.94. PENALTIES AND ENFORCEMENT.**

9 Administrative penalties shall be assessed and collected by the Director in accordance with San  
10 Francisco Administrative Code Chapter 100, a copy of which is on file in Board of Supervisors File No.  
11 \_\_\_\_\_ and which is hereby incorporated by reference.

12  
13 **SEC. 1009.95. EXPIRATION OF PERMIT TO SELL TOBACCO.**

14 Any permit to sell tobacco issued to a pharmacy pursuant to Article 19H shall expire on  
15 September 30, 2008, and shall not be renewed if sales of tobacco by that pharmacy are prohibited  
16 under this Article.

17  
18 **SEC. 1009.96. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

19 The Director may issue and amend rules, regulations, standards, guidelines, or conditions to  
20 implement and enforce this Article.

21  
22 **SEC. 1009.97. PREEMPTION.**

23 In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights  
24 or authority of the State to do those things that are required, directed, or expressly authorized by

1 federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to  
2 prohibit that which is prohibited by federal or state law.

3  
4 **SEC. 1009.98. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**  
5 **WELFARE.**

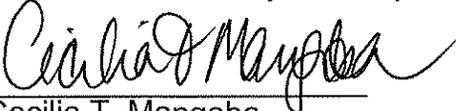
6 In undertaking the adoption and enforcement of this Article, the City and County is assuming an  
7 undertaking only to promote the general welfare. The City does not intend to impose the type of  
8 obligation that would allow a person to sue for money damages for an injury that the person claims to  
9 suffer as a result of a City officer or employee taking or failing to take an action with respect to any  
10 matter covered by this Article.

11  
12 **SEC. 1009.99. SEVERABILITY.**

13 If any of the provisions of this Article or the application thereof to any person or circumstance  
14 is held invalid, the remainder of this Article, including the application of such part or provisions to  
15 persons or circumstances other than those to which it is held invalid, shall not be affected thereby and  
16 shall continue in full force and effect. To this end, the provisions of this Article are severable.

17  
18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By:

  
21 Cecilia T. Mangoba  
22 Deputy City Attorney  
23  
24  
25



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

## Ordinance

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**File Number:** 080594

**Date Passed:**

Ordinance amending the San Francisco Health Code by amending Section 1009.53 and adding Section 1009.60 and Article 19J, to prohibit pharmacies from selling tobacco products.

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July 29, 2008 Board of Supervisors — PASSED ON FIRST READING

Ayes: 8 - Alioto-Pier, Ammiano, Daly, Maxwell, McGoldrick, Mirkarimi, Peskin,  
Sandoval

Noes: 3 - Chu, Dufty, Elsbernd

August 5, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 8 - Alioto-Pier, Ammiano, Daly, Maxwell, McGoldrick, Mirkarimi, Peskin,  
Sandoval

Noes: 3 - Chu, Dufty, Elsbernd

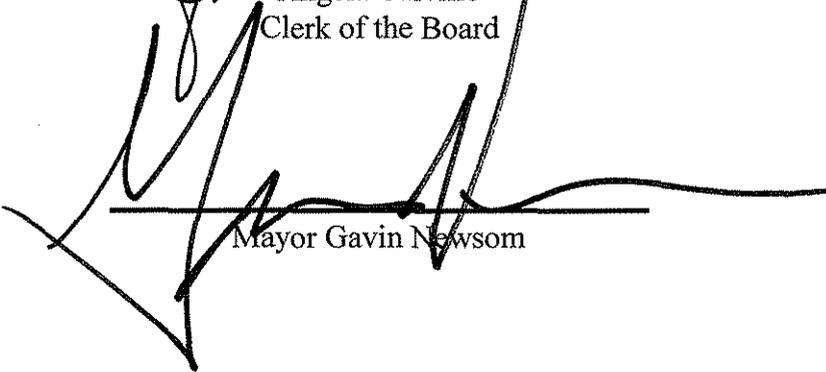
File No. 080594

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on August 5, 2008  
by the Board of Supervisors of the City and  
County of San Francisco.

8.7.08

Date Approved

  
Angela Calvillo  
Clerk of the Board

  
Mayor Gavin Newsom

