

**COMPLIANCE WITH SAN FRANCISCO'S
FLAVORED TOBACCO SALES PROHIBITION**

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Additional Information on Implementation, Figure S1 and Tables S1 and S2

Additional information on program implementation

What was the retailer asked?

The inspector reviewed all tobacco inventory at the location and determined whether the products were flavored or not based on the current flavored tobacco definition the Department was using, which is also listed in the Flavored Tobacco FAQ that was provided to retailers at the time of compliance inspection. Based on the definition which was given to the retailer, the Department asked the retailer to text whether they had discontinued selling flavored tobacco. The “Compliance Notification Letter” and “Flavored Tobacco FAQ” appear later in this Supplemental file.

How did the Department know that the retailer did not simply put flavored products out of view, and retrieve them for a shopper who requested one?

The compliance checks were not meant to be comprehensive routine inspections or formal enforcement. The Department was looking for flavored products on display and educating the business owners further on how they are not permitted to sell these products regardless of where they are located in the store. Retailers that have the products out of sight and still sell them are clearly out of compliance and know they are.

What was done in the compliance checks?

The purpose of the compliance check was not to enforce but to educate the retailers. The Department has also conducted over 300 routine inspections since the roll-out occurred (i.e., education and compliance checks) which led to enforcement actions at about 50 locations that were still selling flavored tobacco.

Because Swisher Sweets were added to the SF flavored tobacco list after July 2019, there was an upswing in non-compliance, but this will likely go down after the Department educates each retailer.

The Department is also conducting decoy operations and routine inspections based on flavored tobacco complaints that come into the Department and enforcing if needed.

The Department will have its first permit suspension regarding flavored tobacco products in November 2019.

What was the impact of the fact that the compliance efforts started so soon after the law was upheld by the voters?

The delayed compliance was due to the fact the law did not allow for a period of time for retailers to exhaust their inventory and for the SFDPH Enforcement Branch to educate themselves and the retailers on what products are actually flavored. We believe the Department's presence and early outreach efforts resulted in the compliance of the law. This lesson has informed newer legislation relating to the subsequent San Francisco law prohibit this sale of e-cigarettes that that had not received an FDA market order effective January 1, 2020, which included a 6-month grace period to give the Department enough time to amend rules and regulations and educate retailers on how to comply.

SFDPH plans on assessing the data further when routine inspections are complete and sharing this data with other jurisdictions and interested parties.

Given that this was a major policy change, did the Department have a special program to assist with implementation? Did the agency need to find special resources or worry about additional costs?

Because the law passed so quickly, followed by the unsuccessful campaign by RJ Reynolds to repeal the law, the situation surrounding implementation of this law was unusual.

There was no special program to implement this law; it was subsumed under the Department's overall tobacco law enforcement activities.

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Is there any information about the retailers that were not contacted or measured? Do they have any similar characteristics? Who is not complying?

With over 700 tobacco retailers at the beginning of the policy rollout, the Department staff and volunteers conducted the initial visits based on who was available and which neighborhoods were easily accessible to them, so the sampling was not geographically random. Some locations were not able to receive a visit or inspections due to a variety of reasons, whether they were closed or out of business. The Department did not have the resources to reinspect at a different time and knew that the locations would be visited within the year for their annual routine compliance inspection.

What is the process for suspensions? Are there warnings or a cumulative point system? Have there ever been any suspensions?

Department inspectors perform an annual routine inspection of all tobacco retailers. If flavored tobacco products are found at the time of the inspection, the Department informs the retailer that these products are not allowed for sale and to remove the products from the premise within 72 hours. The Department returns after that 72 hours and if flavored tobacco products are found again, the Department will proceed with the enforcement process. The Department invites the business owner to an abatement conference which entails a meeting with the Director of Environmental Health to discuss why this violation was not abated. The next step is to bring the case to a designee of the Director of Public Health to the Director's Hearing where the case will be heard. The table outlines the permit suspension period associated with the number of times the violation occurs. The Department will have its first permit suspension regarding flavored tobacco products in November 2019.

Number of Times the Violation Occurred	Permit Suspension Period
1 st Violation	10 Days
2 nd Violation	20 Days
3 rd Violation	40 Days
4 th Violation	90 Days

Are you sure there are not unregulated outlets that need to be checked in SF?

San Francisco has a dual licensing requirement to sell tobacco products. A business must be permitted by the San Francisco Department of Public Health and hold a valid cigarette retailer license with the California Department of Tax and Fee Administration. Every quarter SFDPH receives a list of Tobacco Retailers that have a valid cigarette retailer license from the CDTFA. The SFDPH runs this list against the list of SFDPH permitted businesses. Once the SFDPH identifies locations that have the state cigarette retailer license but are not permitted by SFDPH the SFDPH investigates these locations. It is extremely uncommon for a business to sell tobacco products without a state cigarette license due to the substantial penalties the state can impose on such businesses.

1. Not displaying the cigarette retailer license at the business: \$500 penalty

2. Not keeping proper and accurate invoices for tobacco products: Up to \$5,000 penalty and/or up to one year in a county jail
3. Seizure of tobacco products that are being illegally sold
4. Selling tobacco products with a suspended or revoked state license: Up to \$1,000 penalty

SAN FRANCISCO'S FLAVORED TOBACCO SALES BAN IS NOW IN EFFECT!

This fact sheet is available in:
 (Arabic) العربية
 中文 (Chinese)
 Español (Spanish)
 Tagalog
 Tiếng Việt (Vietnamese)

What is the Flavored Tobacco Sales Ban?

The ban prohibits Retail Tobacco Permit Holders from selling any nicotine or tobacco product, including but not limited to smokeless/chew, cigarettes, cigars, cigarillos, vape liquid and hookah tobacco, that is manufactured to have an aroma and/or flavor, such as fruit, sweet, candy, alcohol, mint, spice or menthol.

When is the ban effective and how can I prepare now?

The ban took effect on July 20, 2018. Discontinue ordering and restocking flavored tobacco products now to prevent losing your investment once the rules and regulations are ready to implement.

Will the City help retailers implement the new law?

Yes. Education and outreach efforts will begin in September 2018. Compliance checks will begin in October 2018, where a notice of correction will be issued if flavored tobacco products are observed.

When will the City enforce the new law?

The Rules and Regulations are aimed for completion in January 2019 and enforcement will commence. Avoid permit suspensions of up to 365 days by discontinuing sales of flavored tobacco products now.

How can I stay informed?

Throughout this process, stay informed by visiting our website, <https://www.sfdph.org/dph/EH/Tobacco/flavoredtobacco.asp>.

- We will also invite retailers to meet with City staff to discuss approaches to phase out existing products, technical assistance needs, and improve the retailers' customer experience.
- Read the mailings from the City and pay attention to the website for posting of FAQs and the proposed Rules and Regulations for public comment.
- You are encouraged to ask questions and submit suggestions to **San Francisco 311 at (415) 701-2311** or <https://sf311.org>.

Examples of tobacco products now banned from sale in San Francisco:



"Menthol" has a distinguishable taste and aroma.



"Sour Apple" is a fruit flavor; "Mint" has a distinguishable taste and aroma.



"Cherry," "Nectar," "Melon," "Apple," "Raspberry," "Strawberry," "Berry" and "Fruit Medley" are fruit flavors; "Crème Brûlée" and "Vanilla" are candy flavors; "Mint" and "Menthol" have distinguishable tastes and aromas; "Hawaiian Pod" has an image indicating it contains a flavor other than tobacco.



Sold individually and in packs; those that are flavored are banned.



"Berry" is a fruit flavor; mint has a distinguishable taste and aroma.



"Lemonade" is a fruit flavored beverage; "Raspberry," "Blueberry," "Orange," "Grape," "Cherry" and "Strawberry" are fruit flavors.



"Strawberry," "White Grape," "Grape," "Peach" and "Blueberry" are fruit flavors.

Images are shown for educational purposes only.



August 2018 v1

Figure S1: Poster prepared by the San Francisco Department of Public Health for all retailers, as a part of the retailer education outreach during September-January 2019 to educate them about the flavored tobacco sales ban effective in July 2018. The Department provided all retailers with an English poster and also offered the additional languages (Spanish, Vietnamese, Chinese, Arabic, Tagalog).

Table S1. Reported retailer questions and concerns (among those who had questions or concerns)		
	Description	Percentages (n=375)
No question or concern	Retailer responded “no” when asked whether there was any question or concern on the ban or did not ask a question or express any concern.	35 % (n =132)
Compliance deadline	Types of questions included, “Until when can we sell the products?” or “When do fines begin?”	30% (n = 112)
Products	Mainly asked for product names that were included in the ban such as, “Does this include Swisher Sweets?” or “What about Black and Milds?”	13% (n=50)
Inventory	Questions included “What do we do with the inventory?”, “Can we sell in wholesale to another city or county?”, “Do we get additional time to sell the inventory?”, “Who will reimburse us for the inventory?”	8% (n = 30)
Policy	“Does the policy include other counties or is it state-wide?”, “Why only San Francisco passed this ban? What are other cities doing?”	7 % (n=25)
No tobacco	Retailers who reported they no longer sell tobacco	3% (n=12)
Sales	“Do you realize this is putting us out of business?”, “City should restrict online sales by zip code.”	3 % (n = 10)
Language barrier	The clerk or the owner did not speak English	1% (n = 4)
Source: Retail Education Survey visits of the stores between Sept-Dec 2018.		

Table S2. List of most frequent questionable flavored tobacco products based on the retailer education outreach survey led by the San Francisco Department of Public Health between September-December 2018

Company	Product type	Products
Philip Morris	Cigarettes	Marlboro Bold, Marlboro 100s Silver, Marlboro southern cut, Marlboro blend, Marlboro edge
	Cigars/Cigarillos	Black and mild jazz
	Smokeless	-
R J Reynolds	Cigarettes	Natural American Spirit, American Spirit color pack, Camel Crush Black, Camel Crush Blue, Capri Magenta, Capri Violet, Camel Jade, Camel Crush Black Box
	Cigars/Cigarillos	-
	Smokeless	-
Swisher International	Cigarettes	-
	Cigars/Cigarillos	Swisher Sweets, Swisher Diamond, Swisher Black, Swisher Original
	Smokeless	-
Djarum	Cigarettes	-
	Cigars/Cigarillos	Djarum Mild, Djarum Special, Djarum Clove
	Smokeless	-
Imperial Brand	Cigarettes	-
	Cigars/Cigarettes	Dutch Masters
	Smokeless	-
Altadis	Cigarettes	-
	Cigars/Cigarillos	Backwoods sweet, Backwoods sweet aromatic
	Smokeless	-



Flavored Tobacco Sales Ban FREQUENTLY ASKED QUESTIONS

The San Francisco Department of Public Health (“SFDPH”) began visiting tobacco retailers to educate the businesses about the flavored tobacco sales prohibition law. After visiting over 200 businesses, SFDPH prepared this FAQ that answers the most frequently asked questions. This FAQ is also available in Arabic, Spanish, Chinese, Tagalog, and Vietnamese on the Environmental Health website at <https://www.sfdph.org/dph/EH/Tobacco/default.asp>.

San Francisco Health Code, Article 19Q – Prohibiting the Sale of Flavored Tobacco Products

1. What is the new law on flavored tobacco products?

On July 7, 2017, the City and County of San Francisco (“the City”) approved Article 19Q of the San Francisco Health Code (SFHC 19Q) which prohibits all San Francisco retail establishments from the sale or distribution of any flavored tobacco product and flavored cigarettes including menthol cigarettes. The law was suspended before it went into effect because of the filing in the Department of Elections of the referendum petition that became Proposition E. San Francisco voters affirmed their support of the prohibition on the sale of flavored tobacco products by adopting Proposition E. Thereafter, the City convened the SFDPH and the Office of Economic Workforce Development to support the retailers through the transition of the prohibition on the sale of flavored tobacco products.

This law affects only retailers—not the use or possession of these products by individuals.

2. When does the flavored tobacco products sales prohibition go into effect?

The law went into effect on July 21, 2018.

3. When is the last day to sell flavored tobacco products?

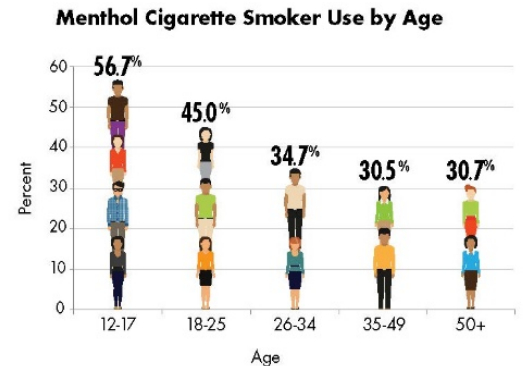
After July 20, 2018, the sale of flavored tobacco products became illegal in San Francisco. However, on July 20, 2018, the majority of San Francisco retail establishments had significant amounts of flavored tobacco products on their shelves. In order to avoid undue hardship to San Francisco businesses, SFDPH elected to defer taking any enforcement actions against retailers until it conducted at least one site visit (“compliance check”) at each retail location in the City. SFDPH will commence taking enforcement on January 1, 2019. **All flavored tobacco products sales must stop before January 1, 2019.**

4. Which tobacco retailers can sell flavored tobacco products?

No retail establishment may sell flavored tobacco products within the City and County of San Francisco.

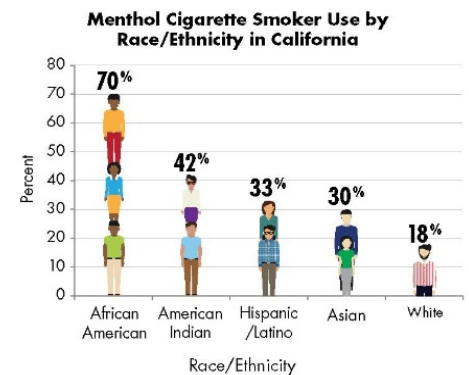
5. Why are flavored tobacco products, including flavored cigarettes, a public health concern?

The law represents an important step in reducing health disparities and smoking incidence rates in San Francisco since the tobacco industry has historically targeted sales of flavored products, especially menthol cigarettes, to youth and communities of color. Most youth who start using tobacco products (including cigarettes, little cigars, or e-cigarettes) start with a flavored product. Research shows that the flavors, particularly menthol, keep people using the product even if they desire to quit. This law was passed to limit youth and exposure to flavored tobacco products and to support quitting smoking to reduce the burden of the number one cause of death and disease in the country.



6. Why is the City prohibiting the sale of menthol flavored tobacco products?

The law is focused on reducing the health disparities we see in San Francisco smoking rates. Because the tobacco industry has historically targeted sales of flavored products such as menthol cigarettes to African-American, American Indian, Latino, LGBT and other communities, the result is a higher use of menthol cigarettes in these communities. The tobacco industry has long used attractive flavors, cheap prices, and bold packaging to target young people and has heavily advertised in communities of color. In 2009 the Federal Family Smoking Prevention and Tobacco Control Act outlawed cherry, vanilla, and alcohol flavored cigarettes but did NOT eliminate the production and sale of menthol cigarettes. This is due to the strong tobacco industry lobby to maintain menthol in their product. This San Francisco law corrects this injustice by eliminating the only remaining flavor of cigarettes- menthol- to protect our community.



7. How is “tobacco product” and “cigarette” defined in the law?

“Tobacco product” is defined in Article 19H, Section 19H.2 of the San Francisco Health Code (“SFHC”) as (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, or sniffed or ingested by any other means, including but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis or snuff; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to person using the device, including but not limited to electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately.

“Cigarette” is defined in Title 15 of the U.S. Code Section 1332(1) as tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

8. Which tobacco products or cigarettes are flavored and not allowed to be sold in San Francisco?

All flavored tobacco products and cigarettes may not be sold by retail establishments in San Francisco, including flavored cigarettes, cigars, cigarillos/little cigars, cigar wraps, chewing tobacco, pipe tobacco, snuff, shisha, hookah tobacco, flavored nicotine products, and electronic devices when flavored nicotine or flavored tobacco are a component or packaged, sold, distributed with the device.

9. What is a flavored tobacco product or cigarette?

Any tobacco product or cigarette that contains an ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to the product during the processing, manufacture, or packing phase that imparts a characterizing flavor.

10. What is a “characterizing flavor?”

A “characterizing flavor” is a distinguishable taste or smell, other than the taste or smell of tobacco. Examples of characterizing flavors include but are not limited to:

Fruit or Sweet		Liquor	Mint or Menthol
Apple	Gummy Bear	Amaretto	Menthol
Berry	Pineapple	Bourbon	Frost
Blueberry	Honey	Rum	Peppermint
Cherry	Java	Cognac	Spearmint
Chocolate	Mango	Irish Cream	Cool Mint
Cinnamon	Peach	Moonshine	Mint
Cream	Spice	Peach Schnapps	Wintergreen
Dulce De Leche	Sour Apple	Pina Colada	Winterchill
Fruit Punch	Sweet Vanilla	Wine	
Grape (white or red)	Raspberry	Scotch	
Sweet Clove	Watermelon	Tequila	
		Whiskey	

11. Can the City give the retailers more time to sell the flavored tobacco products that are currently on the shelf?

No. The law does not provide a grace period for the retailer to sell flavored tobacco products after July 20, 2018. In order to assist San Francisco retailers to comply with the law, SFDPH will not take any enforcement action until January 1, 2019. **All flavored tobacco products sales must stop before January 1, 2019.**

12. Why did it take the City so long to notify the retailers about the law?

The law was suspended before it went into effect because of the filing in the Department of Elections of the referendum petition that became Proposition E. Under a qualified referendum, the law subject to the referendum does not go into effect until the voters decide whether to adopt it. Therefore, the City had to wait until the June 5, 2018 election results were declared. Once San Francisco voters affirmed their support of the ban against flavored tobacco products sales by adopting Proposition E, the ban went into effect on July 21, 2018. Thereafter, the City convened the SFDPH and the Office of Economic Workforce Development to support the retailers through the transition to implementation of the full ban against sales of flavored tobacco products in San Francisco.

13. Will the City mail an official notice about the last day to sell flavored tobacco products?

SFDPH has provided official notification about the flavored tobacco products ban to retail tobacco permit holders through the following methods:

- Fact sheet poster mailer.
- Educational site visits by volunteers to hand deliver the mailers and to provide information about the law.
- Compliance checks by SFDPH staff. Moreover, during the compliance checks, SFDPH staff will leave a Compliance Notification at all establishments that have flavored tobacco products.
- Emails sent to tobacco permit holders if business registered their email under their Business Registration with the City.

Enforcement & Penalties for Selling Flavored Tobacco Products on or after January 1, 2019

14. When will SFDPH begin enforcement?

SFDPH will take enforcement action against any San Francisco retailer that continues to sell flavored tobacco products on or after January 1, 2019.

15. If SFDPH does not begin enforcement until on or after January 1, 2019, why conduct compliance checks in November 2018?

As a courtesy and to assist the retailers, SFDPH will visit all tobacco retailers that are selling flavored tobacco products. The purpose of the visit is to:

- Ensure that each retailer is aware that enforcement will begin on or after January 1, 2019;
- Understand how the retailer plans to comply with the law; and
- Issue a Compliance Notification with a self-verification procedure in order to document that all flavored tobacco sales have stopped at the establishment.

16. What happens at a compliance check?

At a compliance check, SFDPH field staff will introduce themselves, speak to the person-in-charge, verify that flavored tobacco products are present at the establishment, issue a Compliance Notification Letter when flavored tobacco products are present, learn how the business plans to comply with SFHC Article 19.Q, and issue required procedures for the business to report to SFDPH, Environmental Health, that all flavored tobacco products are no longer sold or displayed at their retail store.



[Note: All San Francisco businesses are required to have one person-in-charge during normal business operating hours.]

17. What are the penalties if SFDPH finds a retailer selling flavored tobacco products on or after January 1, 2019?

SFDPH will pursue the suspension of the tobacco permit for establishments that sell flavored tobacco products on or after January 1, 2019.

18. How long is the tobacco suspension period?

The SF Health Code, Sections 19H.14-2 and 19H.19 allow SFDPH to suspend the tobacco permit for:

- Up to 90 days for the first violation;
- Up to 180 days for the second violation within 1 year of the first violation;
- Up to 365 days for the third and subsequent violation within 1 year of the second violation.

19. Will SFDPH issue a citation and monetary fines instead of a tobacco permit suspension?

No. SFDPH does not issue citations (also known as tickets) to retail business owners. The law focuses on the point of sales, therefore SFDPH will pursue only suspension of the retail tobacco permit. Additionally, this law does not focus on the general public possessing flavored tobacco products. Citations/tickets will not be issued to anyone from the general public using flavored tobacco products.

20. In order to avoid the suspension of the tobacco permit, what should I do with the current inventory?

The City recommends that all San Francisco retailers take the following steps:

- a. Contact your vendor or supplier to determine which tobacco products are without any flavors, sweeteners, menthol, or mints.
- b. Stop ordering and restocking flavored tobacco products.
- c. Replace flavored tobacco products with tobacco products without any flavors, sweeteners, menthol, or mints.
- d. Secure and dispose of any remaining or unsold flavored tobacco products before January 1, 2019.

Approved Tobacco Products Permitted for Retail Sale in San Francisco and Disposal of Flavored Tobacco

21. What type of tobacco products may I sell in my retail establishment?

With the SFPDH tobacco permit and the California Tobacco Products and Cigarette Sales License you may sell the following types of tobacco products and cigarettes:

- Tobacco only products
- Tobacco flavored hookah
- Tobacco products labelled “unflavored”
- Tobacco products labelled “unsweetened”
- Tobacco products manufactured without any additive flavors or sweetness
- Electronic smoking devices and components
- Electronic smoking devices with tobacco only flavored juices
- Flavored juices without nicotine
- Flavored juices labelled “0 nicotine”
- Accessories like matches, paper wrappers, ash trays/receptacles, lighters, charcoals, tongs

22. How do you determine which tobacco products are flavored and prohibited from selling in San Francisco?

The City recommends the following to determine whether a tobacco product may be sold in San Francisco:

- a. Work with your vendor or supplier.
- b. Read the label. Does it state “unflavored”, “no flavors”, “unsweetened”, or “not sweet”?
- c. Read websites, advertisements, and customer comments about the tobacco product.
- d. Smell the product.
- e. When in doubt, refuse to sell the product.

Most tobacco products are described on the Internet. For example, a brand of “tropical fusion” cigarillos is described as “enhanced with delicious tropical flavors.” If you remain unsure about a product, refuse to sell the product until you receive a letter from the manufacturer on business letter head that clearly states the tobacco product is not sweetened, flavored, or processed to have a characterizing flavor.

23. Will the City develop a list of flavored tobacco products that may not be sold in San Francisco?

No. In 2014, the City of Chicago created a database of flavored tobacco products for their retailers that could not sell flavored tobacco products. To date, there are over 1,800 different products in the City of Chicago’s database. Tobacco Retailer should follow the steps outlined in Question #22 of this FAQ. Finally, when there is doubt about a product, retailers should refuse to sell the product until they receive a letter from the product manufacturer on business letter head that the product has no additives or flavors.

24. If a product label does not say the tobacco product is flavored, or if the description is vague, such as “tropical fusion,” does that mean the retail establishment may sell the product?

Maybe not. Some products do not list the flavor on the package, but are still flavored. Regardless of how a product is labeled, if the product has a distinguishing taste or smell other than tobacco (a “characterizing flavor”), the retail establishment may not sell or distribute the product.

25. Did San Francisco prohibit the sales of all Swisher Sweets or Black & Mild products?

No. San Francisco’s flavored tobacco law does not prohibit brands. Swisher Sweets and Black & Mild are brand names. Within each brand name, the retail owner or vendor must determine which products do not have additives that produce a characterizing taste or smell. For example, Swisher Sweets products that are labelled “unflavored”, “no flavors”, “unsweetened”, or “not sweet” may be sold by San Francisco permitted tobacco retailers. Black & Mild Regular may be sold by San Francisco permitted tobacco retailers.



26. Can you sell flavored liquids separately from nicotine or tobacco flavored only liquids?

Yes. Vape shops and other tobacco retailers may sell flavored liquids separately from tobacco flavored only liquids. Be aware that tobacco retailers are only allowed to sell manufacturer sealed liquid products to retail customers. The Federal Food and Drug Administration (“FDA”) does not allow retailers to mix liquids on site without first receiving FDA approval as a manufacturer. Additionally, electronic smoking devices with tobacco only flavors may be sold by San Francisco retailers.

27. Will the City reimburse retailers for any unsold flavored tobacco products?

No. The City will not reimburse any retailers for any unsold flavored tobacco products. For this reason, in August 2018, the City advised all San Francisco permitted tobacco retailers to stop ordering and restocking flavored tobacco products.

28. If unsold flavored tobacco products are disposed of as solid waste, can a retailer recover the Department of Public Works Cigarette Litter Abatement fee?

No. The San Francisco Administrative Code, Chapter 105, the Cigarette Litter Abatement Fee Ordinance – requires that consumers pay a fee for every pack of cigarettes purchased at a San Francisco retail establishment. If a retailer chooses to dispose of packs of cigarettes as solid waste, there is no fee that will be collected from the consumer. The retail establishment is only required to self-report to the San Francisco Treasurer and Tax Collector’s Office (“SFTTX”) the number of cigarette packs sold during the quarter which should not include the number of packs disposed of as solid waste.

Flavored Tobacco Products Sales Online, In Other Cities or Counties, and Distributors or Wholesalers

29. Can Customers purchase flavored tobacco products online? Why?

Yes. Online retail sales of flavored tobacco products are not under the authority of local jurisdictions. Online retailers must comply with federal and state laws and regulations regarding the distribution, shipping, and handling of tobacco products. Moreover, the City’s flavored tobacco law only applies to retail establishments with the SFDPH tobacco permit.

30. Can Customers purchase flavored tobacco products in other Cities or Counties outside of San Francisco?

Maybe. Although the State of California does not prohibit the sales of flavored tobacco products, as of June 2018, 19 cities or counties have passed laws similar to the City's flavored tobacco products sales prohibition. Customers may travel and purchase flavored tobacco products within jurisdictions that allow the sales of flavored tobacco products. Appendix A provides the June 2018 American Lung Association Center for Tobacco Policy and Organizing *Matrix of Local Ordinances Restricting the Sale of Flavored Tobacco Products*.

31. Can a San Francisco retail establishment sell flavored tobacco products to customers that do not live in San Francisco?

Maybe. A retail establishment that is also licensed by the California Department of Taxes and Fees Administration ("CDTFA") as a distributor may sell flavored tobacco products to any customer on their distribution list. The retail establishment must comply with all the distributor licensing, tobacco product shipping restrictions, and record keeping requirements. For more information about becoming a distributor, the business owner must contact the State of California Department of Taxes and Fees Administration.

32. Can a retail customer purchase flavored tobacco products from Wholesalers or Distributors located in San Francisco?

No. The Wholesaler or Distributors may not sell tobacco products to retail customers without first obtaining and maintaining a valid tobacco permit from SFDPH and a valid CDTFA Tobacco Products and Cigarette License. Once the Wholesaler or Distributor has a valid SFDPH permit, the Wholesaler or Distributor is subject to all San Francisco laws relating to the sales and distribution of tobacco products to retail customers, including the flavored tobacco retail sales prohibition.

33. What other jurisdictions have passed ordinances restricting the sale of flavored tobacco products?

Center for Tobacco Policy and Organizing (<https://center4tobaccopolicy.org>) has created a [matrix of jurisdictions in California that have laws about flavored tobacco](#).



Compliance Notification Flavored Tobacco Products Sales Prohibition



Dear Retail Tobacco Permit Owner,

As a courtesy, the San Francisco Department of Public Health (SFDPH) is issuing this letter to inform you about:

- Article 19Q of the San Francisco Health Code (SFHC 19Q) – the Flavored Tobacco Products Sales Prohibition Ordinance;
 - Selling tobacco or nicotine products with any characterizing flavor – a distinguishable taste or smell, other than the taste or smell of tobacco – like menthol, mint, fruit or candy flavors, alcohol flavors, or spices is a violation of San Francisco Health Code, Article 19Q (Prohibition of Flavored Tobacco Products Sales), Sections 19Q.3 and 19Q.4;*
- Your responsibility under the new law;
- Consequences you may face if you continue to sell flavored tobacco products on or after January 1, 2019; and
- How to comply with SFHC 19Q.

The City and County of San Francisco passed SFHC 19Q, which prohibits the sale of flavored tobacco products, including flavored nicotine, hookah tobacco, and menthol products, in all retail establishments. The purpose of the law is to limit youth use and exposure to flavored tobacco. On June 5, 2018, 68% of San Francisco voters reaffirmed support of the flavored tobacco products sales ban. The new law became effective on July 21, 2018.

During the compliance check visit, SFDPH staff verified that your establishment has flavored tobacco products displayed on shelves or stored in one or more storage area(s). **Therefore, SFDPH has the right to consider you in violation of SFHC 19Q and is issuing this compliance notification letter.**

Furthermore, in accordance with SFHC, Article 19H – the Retail Tobacco Permit Ordinance, Sections 19H.14-2 and 19H.19, SFDPH may pursue suspension of your tobacco permit as follows:

- Up to 90 days for the first violation;
- Up to 180 days for the second violation within one year of the first; or
- Up to 365 days for the third and subsequent violation within one year of the second.

However, SFDPH will not take any enforcement action against you if **you complete the following two (2) requirements:**

1. **Stop selling flavored tobacco products to your customers AND**
2. **Properly dispose of any unused flavored tobacco products**

Self-Verification - Text (262) 528-6820 with the:

- 1) Business Name,
- 2) Business Address,
- 3) Owner Name, AND
- 4) **“We have stopped selling Flavored Tobacco”**

Text (262) 528-6820 to verify that the business has stopped selling Flavored Tobacco

Sign this letter below to acknowledge receipt of this compliance notification letter. If you choose not to sign, SFDPH staff will note in the signature line “Declined to Sign” and leave the compliance notification letter at your business location. Whether you sign the receipt of this letter or not, you remain responsible for compliance with SFHC 19Q and may have your tobacco permit suspended for up to 365 days if found selling flavored tobacco products.

Received By: (Print Name) _____	Signature: _____	Date: _____
SFDPH Staff Name: _____	Signature: _____	Date: _____
FOR SFDPH Use Only: <input type="checkbox"/> No Tobacco Products Flavored Tobacco Products Present: <input type="checkbox"/> YES <input type="checkbox"/> NO		
Store Name/DBA: _____	Store Address: _____	Visit Date: _____

Example of Flavored Tobacco and Nicotine Products:

Tobacco or nicotine products that have a “characterizing flavor” including the smell or taste of sweet, fruit, candy, alcohol, spice, menthol, or mint **may not be sold** by any San Francisco retail establishment.

Fruit or Sweet		Liquor	Mint
Apple	Gummy Bear	Amaretto	Menthol
Berry	Pineapple	Bourbon	Frost
Blueberry	Honey	Rum	Peppermint
Cherry	Java	Cognac	Spearmint
Chocolate	Mango	Irish Cream	Cool Mint
Cinnamon	Peach	Moonshine	Wintergreen
Clove	Spice	Peach Schnapps	Winterchill
Cream	Sour Apple	Pina Colada	
Dulce De Leche	Sweet Vanilla	Wine	
Fruit Punch	Raspberry	Scotch	
Grape (white or red)	Watermelon	Tequila	
Green Sweets		Whiskey	

The examples above and below are not a complete or exhaustive list of flavored tobacco or nicotine products and are used for educational purposes only:





San Francisco Department of Public Health

Flavored Tobacco Products List

The “Flavored Tobacco Products List” is a non-exhaustive Flavored Tobacco Products List that seeks to facilitate compliance with and enforcement of Article 19Q. The Flavored Tobacco Products List contains the following:

1. Tobacco products that DPH has determined to be flavored based on their taste or aroma;
2. Tobacco products that DPH presumes to be flavored based on labeling, packaging, or marketing; and/or,
3. Tobacco products that have been found by an administrative law judge to be flavored.

The non-exhaustive Flavored Tobacco Products List includes a small number of tobacco products that are the subject of inquiries by the public and therefore does not include all flavored tobacco products that are subject to the prohibition on the sale of flavored tobacco products.

For tobacco products inquiries: please contact Tobacco & Smoking Program, 1390 Market Street, Suite 210 San Francisco, CA 94102 or via email to EHB-TobaccoProgram@sfdph.org.

Brand	Product Name	Type of Product	Type of Flavor
American Spirit	Green Box	Cigarettes	Menthol/Mint
American Spirit	Dark Green Box	Cigarettes	Menthol/Mint
Backwoods	Sweet Aromatic	Little Cigars	Sweet
Backwoods	Black n Sweet Aromatic	Little Cigars	Sweet
Bugler	Green	Pipe Tobacco	Menthol/Mint
Camel	Jade Silver – Turkish Blend	Cigarettes	Menthol/Mint
Camel	Jade	Cigarettes	Menthol/Mint
Camel Crush	Regular to Fresh	Cigarettes	Menthol/Mint
Capri	Indigo	Cigarettes	Menthol/Mint
Cuttwood	Bird Brains	E-Juice	Fruit
Cuttwood	Tobacco Trail	E-Juice	Sweet
Cuttwood	Mr. Fritter	E-Juice	Fruit
Cuttwood	Boss Reserve	E-Juice	Sweet
Djarum	Black Mild	Cigarettes	Clove
Djarum	Black	Cigarettes	Clove
Djarum	Bali Hai	Cigars	Clove
Djarum Black	Sapphire	Cigars	Menthol/Mint
Dutch Masters	Java Fusion	Cigarillos	Sweet
Garcia y Vega Game Leaf	Cognac	Cigarillos	Alcohol
Garcia y Vega Game Leaf	Sweet Aromatic	Cigarillos	Sweet
JUUL	JUULpods Crème	E-Cigarettes	Sweet
JUUL	JUULpods Mango	E-Cigarettes	Fruit
JUUL	JUULpods Mint	E-Cigarettes	Menthol/Mint
Marlboro	Ice	Cigarettes	Menthol/Mint
Middleton's Black & Mild	All Wood Tip Products	Cigars	Sweet
Swisher Sweets	Classic (Red)	Cigarillos	Sweet
Swisher Sweets	Summer Twist	Cigarillos	Sweet
Swisher Sweets	Wild Rush	Cigarillos	Sweet
Swisher Sweets	Black	Cigarillos	Sweet

San Francisco Retailer Educational Visits: Flavored Tobacco Sales Ban

While reviewing these slides, please take note of any questions you may have ☺

Purpose of this project

- Voters adopted a law that prohibits the sale of all flavored tobacco products, effective July 20, 2018. This project aims to ensure that all 799 local tobacco retailers get an in-person visit sharing this information.
- You are serving as a liaison to retailers
 - Delivering an educational poster
 - Recording any additional questions from retailers
 - Noting retailer language needs, and any tricky tobacco products they identify

Just for your knowledge- flavored tobacco means a variety of products



- Please note that there can be many types of products and some are confusing. Your job as a volunteer is not to know all the products, inspect individual products, nor determine which are flavored and which are not.

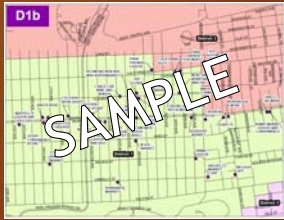
Project timeline

- The retailer educational visit project is expected to start in late September and last through early November
 - Your training will occur in late September or October
 - Visits will occur until we have gone to all stores- hopefully by early November

Materials you will be using for visits

1. Map and list of your assigned stores
2. Contact information for TFP staff if you have questions in the field
3. Retailer education poster (offer one to every retailer you visit)
4. Copies of the education poster in other languages. Available in:
 - a. Spanish
 - b. Chinese
 - c. Arabic
 - d. Vietnamese
 - e. Tagalog
5. Two Copies of the retailer visit receipt (with signature lines on the bottom)
6. iPad for data collection of a 13-question survey and to take photos of any products retailers have questions about

1. Map and list of your assigned stores



2. Contact information for TFP staff if you have questions in the field

[contact information deleted]

3. Retailer Education Poster (offer one to every retailer you visit)



4. Copies of the education poster in other languages.

- Available in:
 - a. Spanish
 - b. Chinese
 - c. Arabic
 - d. Vietnamese
 - e. Tagalog



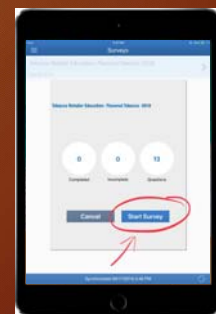
5. Two Copies of Retailer Visit Receipt (with signature lines on the bottom)

- *You keep one copy signed by yourself and the retailer
- *Give retailer the other copy, signed by yourself and the retailer



6. iPad for data collection of a 13-question survey and to take photos of any products retailers have questions about

([name deleted] will do a brief overview of the iPad when you pick up your maps)



Your role as a store visitor

- Your role is delivering the information in a friendly way, making sure the person you talked to received it and completing your brief iPad survey.



****You do NOT need to answer questions if you are unsure. Emphasize that you are a volunteer and you were only asked to deliver the information provided.**

You should plan to take notes of any questions from retailers within the iPad survey**

Your responsibilities as a store visitor

1. Complete this training to prepare yourself for the project
2. Receive a map of the area you will visit and list of stores to visit
3. Check out an iPad from [name deleted] and take care of it
4. Visit all stores on your map & check off every store you went to on the reverse side of the map
5. Conduct accurate data entry on your iPad for every store visited or attempted
6. Deliver a copy of the Retailer Educational Poster
7. Take a photo on the iPad of any product the store owner has questions about
8. Give the store representative the Retailer Visit Receipt and ask them to sign a copy
9. Check in with [name deleted] at least weekly (email or phone progress - eventually you will turn in your iPad when done with all the stores on your map)

Tips for a successful educational visit

- SAFETY FIRST!** Never, ever should you be in a situation where you don't feel safe. If you cannot complete the visit for any reason, remove yourself from the store and make a note on your iPad.
- If any information doesn't match your records, feel free to complete the store visit and correct the information on the iPad (address, store name, or some other issue)
- Your role is delivering the information in a friendly way, making sure the person you talked to received it and noting in your brief survey any additional questions.

****You will NOT need to answer every question the store owner has. Instead you should plan to input notes of any questions within the iPad Survey.**

Your go-to option when you don't know

Always feel free to say:

"I am a volunteer. My reason for visiting is to get you this poster and write down questions you have. I'm sorry, I don't know all the answers."

What to prepare before entering a store

- Have 2 copies of the Retailer Visit Receipt (the form that has signature lines). Before entering the store, on both copies, you should fill out:
 - The store name
 - The store address
 - Your name
 - Your signature
- Open the survey on the iPad and complete Questions 1-5.



What to do when you get to a store

This next section will guide the interaction between you, the volunteer and the store clerk/store owner

Sample Educational Visit Script

- As you enter the store, approach the store clerk:

"Hello, my name is _____. I'm volunteering with the Health Department. We are visiting all the stores in San Francisco to make sure that you receive information about the new menthol and other flavored tobacco law. Are you the best person for me to speak with? I want to make sure we write down any questions you have for the Health Department."

(This script will be embedded within your iPad survey)

Sample Educational Visit Script (continued)

- If they respond *"Yes, I am the one to speak with"* or *"Yes, let me get the manager"* :
 - Hand them the Retailer Education Poster and ask if they received their copy in the mail or would like another one.
 - You will now proceed with questions 6-13, following the scripts on the iPad.
- If they respond *"No the person you need is not here"* or they do not wish to speak:
 - Ask "Can I leave a poster with you? This poster shows how you can get more information about the new law."
 - On Question 6 you will state why you could not complete the survey.
 - Proceed to the next page and press "DONE" to complete the survey for this store.

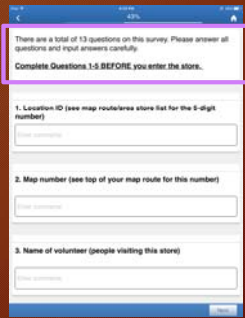
Language barrier with store clerk?

- Try your best to communicate with the clerk.
- If the store clerk does not speak English and you cannot communicate with them effectively, produce the Retailer Education Posters in other languages and provide the appropriate one.
 - Additional languages posters are available in: Spanish, Chinese, Arabic, Tagalog, Vietnamese
 - Leave a Retailer Education Poster and a Retailer Visit Receipt with them.
 - You will record their language needs on the survey by completing Question 7 on the iPad survey.
 - Scroll to the bottom of the survey on the iPad and press "DONE"
 - You are now done with the visit and survey for this store.

The iPad survey

- There are a total of 13 questions on this survey. Please carefully input your answers on your assigned iPad for each store you visit.
- The first 5 questions can be completed BEFORE you enter the store.
- You can use the "back" arrow in the upper left of the survey to return to a question if you need to change what you wrote.

When you start the survey, you should be prompted with a screen that looks like this.



Carefully read and follow the instructions at the very top of the page.

The screenshot shows the following text:

There are a total of 13 questions on this survey. Please answer all questions and input answers carefully.

Complete Questions 1-5 BEFORE you enter the store.


1. Location ID (see map route/area store list for the 5-digit number)

2. Map number (see top of your map route for this number)

3. Name of volunteer (people visiting this store)

Question 1- Location ID (see map route/area store list for this 5-digit number)

- Note: Questions 1-5 should be completed BEFORE you enter the store.**
- On the reverse of your map will be a list of your assigned stores.
- Locate the store you are about to visit and enter the 5-digit number into the iPad to complete Question 1.




The screenshot shows a table with columns for 'Location ID', 'Store Name', 'Address', 'City', 'State', and 'Zip'. A purple box highlights the 'Location ID' column.

Question 2 - Map number (see top of your map route for this number, *for example D1a*)

- The top of your map includes a map number- please enter this number on your iPad to complete question 2.

2. Map number (see top of your map route for this number)



Question 3 - Name of Volunteer (people visiting this store)

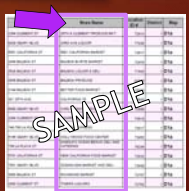
- Enter your name and the name of anyone else on the visit if you have a partner visiting with you to complete question 3.

3. Name of volunteer (people visiting this store)

Question 4 - Store Name (as seen on storefront)

- Identify the name of the store as listed on the storefront.
- If no name is listed on the front of the store, enter the store name listed on the back of your map.
- Type into the iPad the store name that is assigned to the address you are visiting to answer question 4.

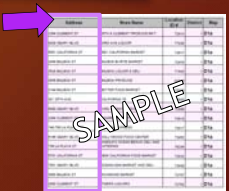
4. Store Name (as seen on storefront)



Question 5 - Store Address (physical street address)

- Review the store location as listed on the back of your map.
- Look on the storefront for street numbers and enter the store address to complete question 5.

5. Store Address (physical street address)



Question 6 - Can you survey this store?

- If YES, use your iPad to mark the first choice to complete question 6.
- If NO, mark why you cannot continue:
 - The store does not exist
 - The store is closed at the time you visit
 - Membership or a fee is required to enter
 - The store or surrounding area is unsafe
 - You are asked to leave the store before you can complete the survey
 - Other reasons- please type them in (a box will appear to input the reason if you select this option)
- If you are unable to survey the store, this concludes your survey. Your iPad will continue to question 13 and you can press "Done."

6. Can you survey this store?

Yes I can

No, the store does not exist

No, store is closed

No, membership or fee required to enter

No, store/surrounding area unsafe

I was asked to leave before completing the survey

Other reason specify reason

When you press "NEXT" (if you chose "Yes I can" for Question 6), you will be prompted with a screen with a script and more instructions.

Read these carefully and keep scrolling down to continue with the next questions on the survey.

As you enter the store and approach the store clerk, read this script.

Hello, my name is _____ I am volunteering with the Health Department. We are visiting all the stores in San Francisco to make sure that you receive information about the new menthol and flavored tobacco law. Are you the best person for me to speak with? I want to make sure we write down any questions you have for the Health Department.

If the person "NO" say the reason in your own words in the script.

If the person "YES" say the reason in your own words in the script.

If you are not sure if you are the best person to speak with, please ask the store clerk. If you are not sure, please ask the store clerk. If you are not sure, please ask the store clerk.

KEEP SCROLLING TO CONTINUE WITH THE SURVEY

7. "ASK STORE CLERK"

Would you like this poster in another language?


(If YES, select language and provide translated posters. If NO, skip this question.)

Spanish

Chinese

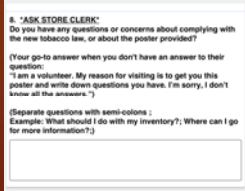
Question 7 - Does the store clerk/owner prefer materials or discussion in another language?

- If the store clerk doesn't speak English, take out and show them the translated posters to determine their preferred language.
- Please note any non-English language need on your iPad (a box will appear to specify the language to complete question 7).
- If you are unable to communicate with the clerk, this concludes your survey. Continue to question 13 and press "Done."



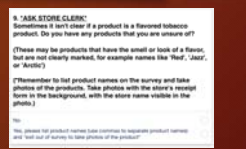
Question 8 - Do you have any questions or concerns about complying with the new tobacco law, or about the poster provided?

- Read the above question to the store clerk
- Your go to answer when you don't have an answer to their question:
"I am a volunteer. My reason for visiting is to get you this poster and write down questions you have. I'm sorry I don't know all the answers."
- Input their questions in the text box and separate each question with a semi-colon (;)




Question 9 - Sometimes it isn't clear if a product is a flavored tobacco product. Do you have any products that you are unsure of?

- Read the above question to the store clerk
- Ask them to show you any products that they are not sure about.
- Type into your iPad the name of those products to complete question 9.
- Press the circle home button on your iPad to close out of the survey app and select the "Camera" app to take a picture of any product that you typed into the survey.



A text box will appear if you select "Yes"


- Please be sure to list names with commas separating each name
- Please take photos of the product over the receipt form with the store name visible (see next slide for an example)



- Take a photo of the product that the store clerk is unsure about over the receipt form (has signature lines)
- Please make sure that the store name is visible when you take a photo!

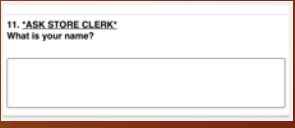
Question 10 - Do you see any menthol or flavored tobacco products in the store?

- DO NOT read the above question to the store clerk, just look around the store to see if there are any menthol or flavored tobacco products in the stores
- Examples of menthol and flavored tobacco products are provided on the question.
- Mark the appropriate answer to complete Question 10.



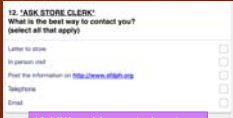
Question 11 - What is your name?

- Ask the clerk or store owner what their name is for your records.
- Write that name in the iPad to complete question 11.



Question 12 - What is the best way to get information to you?

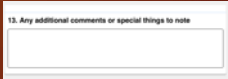
- *Ask the store clerk the above question.*
- Tell the store clerk the Health Department is looking for the best way to get information to all stores.
- Read the options to the clerk and ask what is their preferred method of getting information. Select all that apply to answer question 12.



Additional boxes to input their email or telephone will appear if you select 'Email' or 'Telephone'


Question 13 - Any additional questions or special things to note?

- *Ask the store owner if they have anything else to add.*
- Feel free to use this space for additional notes from yourself as a volunteer
 - For example: If there is something else special you need to take a note of like an incident that occurred.
 - Or if they had questions about another issue.
 - Type in any additional information to complete question 13.

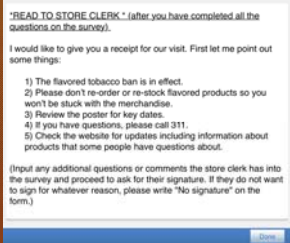


Educational Visit Receipt (The below script is on your iPad after question 13)

- Produce the Educational Visit Receipt form and summarize the main points:
 - "The flavored tobacco ban is in effect.
 - Please don't re-order or re-stock flavored products so you won't be stuck with the merchandise.
 - Review the poster for key dates.
 - If you have questions, please call 311.
 - Check out the website for updates including information about products that some people have questions about."



After Question 13 on the iPad survey, you will see these instructions to read to the store clerk:




- Familiarize yourself with these instructions, as they pertain to the Educational Visit Receipt.
- If you were unable to survey the store, you can ignore this section.
- Note any additional questions or comments that arise from the store clerk in Question 13.

Educational Visit Receipt

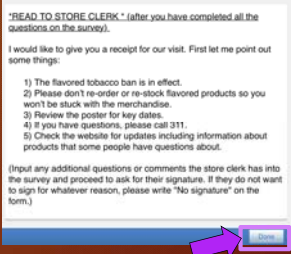
- Ask them to sign one copy of the receipt to show that they received your visit. Tell them one copy is for them to keep. Both you and the store clerk should sign and date both copies of the receipt.
- Keep the signed receipt on your clipboard to return to [name deleted] when you have visited all stores on your map.

"If the store clerk is uncomfortable with signing for whatever reason, write "No Signature" on the signature line"



Once you have completed the Educational Visit Receipt and inputted all your answers into the iPad survey, you are done with your visit!

Press "Done" on the iPad survey to complete it.



Technical issues

- There is no data plan for the iPad. You will save each survey onto your iPad by pressing "Done" after question 13 and Brittany will upload the data when you meet with her after you visit all the stores on your map.
- When you press "Done" after question 13 for each survey, check that store off your list on the back of the map.
- Please take care of the device. If you should lose or break the iPad, the record of your visit will be lost.

Travel reimbursement

- If you are a City employee, travel is handled through the normal processes
- For volunteers, [name deleted] will provide you with a travel reimbursement form. Please note any travel costs for each day you are in the field.
- In most cases, you are likely to be using public transit and should mark how many Muni trips you take to get to your destination (or BART if most efficient).
- In some cases you may be driving your own vehicle and will accrue mileage.
- If you need to pay for parking, please do so in the most cost-effective manner possible.
- Should you have any questions, please contact [name deleted].

Our many thanks!

- We could not accomplish this task without your support.
- Truly we thank you for volunteering to help get the word out to local stores about this new law!
- You are making sure our community is safe by helping retailers to understand this new law.
- We hope to celebrate you with an appreciation dinner at the conclusion of our data collection process!



Now that you have finished the training...

- Please let [name deleted] know that you have finished the training
 - Next you will coordinate a time that you would like to go to 25 Van Ness Ave, Suite 345 San Francisco, CA to pick up your materials and get familiar with the iPad device (and practice a store visit)
- Please allow about 30-40 minutes for this visit to 25 Van Ness Ave, Suite 345, depending on your questions.
- Please plan to come on a day that you will go out to do visits.
- Come prepared with any questions that you may have ☺.

Figure S1 and the material beginning on Page 7 are all public documents prepared by the San Francisco Department of Public Health. None are copyrighted and may be shared freely.