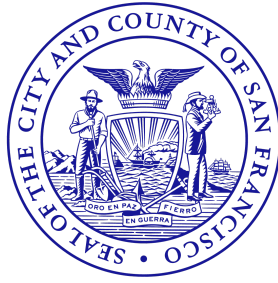


City and County
of San Francisco



Member, District 6,
Board of Supervisors

MATT DORSEY

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NEWS RELEASE

Dorsey proposes mandate for local pharmacies to carry naloxone for reversing opioid overdoses

With Narcan soon poised for over-the-counter availability, Dorsey's proposed ordinance would expand access to the life-saving medicine amidst a worsening drug OD crisis

SAN FRANCISCO (June 27, 2023) — Supervisor Matt Dorsey today introduced legislation that would require all retail pharmacies in San Francisco to stock opioid antagonists such as naloxone, a life-saving medication known for its effectiveness in reversing deadly opioid overdoses. The proposed ordinance comes as the Narcan-brand naloxone nasal spray is poised for wider commercial availability in the coming months, following the U.S. Food and Drug Administration's approval last March for the prescription-only opioid inhibitor to be sold over the counter. Dorsey's move also comes at a time when the City's fentanyl-driven drug crisis is putting 2023 on pace to be the deadliest year for fatal drug overdoses in San Francisco history, according to [data maintained](#) by the city's Office of the Chief Medical Examiner.

"Although a majority of pharmacies in San Francisco stock naloxone, mandating that it be carried by all retail pharmacies all the time is an important step we can take to maximize its availability and help save lives," said Supervisor Dorsey. "Even with Narcan set for over-the-counter sales later this year, we know that some retailers' hesitation to engage consumers around illicit drug use is preventing the market from facilitating what should be universal access. Nationwide, retail pharmacies account for only a fraction of naloxone doses, and even San Francisco pharmacies have fallen short in random 'secret shopper' surveys."

Dorsey added: “To my knowledge, the retail pharmacy naloxone ordinance we’re introducing today is a first of its kind — but I hope it’s a blueprint for other municipalities, and perhaps even state governments, to similarly expand access to this potentially life-saving intervention. I am grateful to our Department of Public Health and City Attorney David Chiu’s office for their assistance in developing this legislation, and to many of our local retail pharmacies that have been extraordinarily cooperative partners in understanding the life-and-death stakes posed by our drug OD crisis, and recognizing the need to help expand access to naloxone.”

“Walgreens believes that saving lives from deadly opioid overdoses is a shared responsibility amongst all public health stakeholders,” said Perry Han, Regional Vice President of Walgreens. “Access to Naloxone is essential and that’s why Walgreens carries this life-saving drug in all of our San Francisco pharmacies. We applaud Supervisor Dorsey for his work to increase access throughout San Francisco.”

“At Safeway, we already stock naloxone in our pharmacies,” said Wendy Gutshall, Public and Government Affairs Director at Safeway. “We want to give our customers the choice to purchase this potentially life-saving drug.”

Like many other states, California’s naloxone access law extends a standing prescription to retail pharmacies that currently allows pharmacists to dispense Narcan or a generic brand naloxone to anyone who requests it. However, a March 2023 [FDA Foundation study](#) estimated that among the 16.95 million doses of naloxone distributed nationwide in 2021, only 2.64 million doses — less than 16 percent of the total — were distributed by retail pharmacies. More recently, a “secret shopper” survey conducted by the San Francisco Department of Public Health found that approximately 20 percent of local retail pharmacies surveyed did not have naloxone in stock, despite having legal authorization to provide it on request.

On March 29, 2023, the FDA approved Narcan as a 4 milligram naloxone hydrochloride nasal spray for over-the-counter, nonprescription use. Expected for retail availability later this year, Narcan will be sold directly to consumers in places like drug stores and other retail outlets.

Dorsey’s proposed ordinance will amend the San Francisco Health Code to require each retail pharmacy in the City to stock at least two boxes of an opioid antagonist, before and after it’s available for over-the-counter sale.

The ordinance would also allow a 3-day grace period for retail pharmacies to reorder two boxes, and provide for penalties for violations of not less than \$250 per violation and not more than \$1,000 per violation.

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For immediate release:

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Contact: BRYAN DAHL

Bryan.Dahl@sfgov.org

+1 (415) 554-7969

LEGISLATIVE DIGEST

[Health Code - Requiring Retail Pharmacies to Stock Opioid Antagonists]

Ordinance amending the Health Code to require each retail pharmacy in the City to stock at least two boxes of an opioid antagonist, such as naloxone, used to reverse opioid overdoses.

Amendments to Current Law

The Proposed Ordinance would create a new article in the Health Code requiring each retail pharmacy in the City to stock sufficient opioid antagonists, such as naloxone, to fulfill at least two purchases, which would typically be two boxes, of such opioid antagonists by consumers. The Proposed Ordinance would also allow a 3-day grace period for retail pharmacies to reorder two boxes. Finally, the Proposed Ordinance would provide for penalties for violations of not less than \$250 per violation and not more than \$1,000 per violation.

Background Information

According to the U.S. Centers for Disease Control and Prevention, overdose deaths remain a leading cause of injury-related deaths in the United States, and the majority of overdose deaths involve opioids. Naloxone and other opioid antagonists are life-saving medications that are used to reverse a drug overdose. The availability and distribution of naloxone at pharmacies is one of the most effective ways to provide naloxone to people most likely to use it and reverse an overdose. But, naloxone at pharmacies remains largely inaccessible.

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[Health Code - Requiring Retail Pharmacies to Stock Opioid Antagonists]

Ordinance amending the Health Code to require each retail pharmacy in the City to stock at least two boxes of an opioid antagonist, such as naloxone, used to reverse opioid overdoses.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Health Code is hereby amended by adding Article 48, consisting of Sections 4801 through 4808, to read as follows:

ARTICLE 48:

REQUIRING RETAIL PHARMACIES TO STOCK OPIOID ANTAGONISTS.

SEC. 4801. FINDINGS.

(a) According to the U.S. Centers for Disease Control and Prevention, overdose deaths remain a leading cause of injury-related deaths in the United States, and the majority of overdose deaths involve opioids. From 2000 to 2015, more than half a million people died from drug overdoses across the United States. In 2021, more than 71,000 people died from synthetic opioid-related drug overdoses in the United States. On October 26, 2017, the Acting Secretary of the U.S. Department of Health and Human Services declared the opioid crisis a national public health emergency and has renewed such declaration every 90 days since 2017.

1 (b) According to the California Department of Public Health, based on preliminary data, there
2 were 6,843 opioid-related overdose deaths in California in 2021; 5,722 of these deaths were related to
3 fentanyl, and 224 of the fentanyl-related overdose deaths were teens, ages 15–19 years old.

4 (c) According to the San Francisco Office of the Chief Medical Examiner, there were 647
5 accidental drug overdose deaths in San Francisco in 2022, and over 70% of those deaths were
6 attributable to fentanyl. Between January and May 2023, preliminary reports indicate there were 346
7 overdose deaths in San Francisco, a more-than 40% increase from the same period in 2022, with more
8 than 79% of those deaths attributable to fentanyl.

9 (d) Naloxone and other opioid antagonists are life-saving medications that are used to reverse
10 a drug overdose. They are safe to use, work almost immediately, and are not addictive. According to
11 peer-reviewed articles published in the journals “Drug and Alcohol Dependence” and “JAMA Internal
12 Medicine,” state laws allowing pharmacist dispensing of naloxone have been associated with a 53%
13 increase in naloxone dispensing, and a significant reduction in overdose deaths. The California Public
14 Health Officer has issued a standing order to allow pharmacies, community organizations, and other
15 approved entities to distribute prescription naloxone and allow for the administration of prescription
16 naloxone by a family member, friend, or other person, to a person experiencing an overdose.

17 (e) On March 29, 2023, the U.S. Food and Drug Administration announced that it approved
18 NARCAN®, a four milligram (mg) naloxone hydrochloride nasal spray, for over-the-counter,
19 nonprescription use. It is the first naloxone product approved for use without a prescription.

20 (f) Despite the efficacy of naloxone and other opioid antagonists, and the fact that pharmacy
21 distribution of naloxone is the second-most effective way – after community distribution – to provide
22 naloxone to people most likely to use it and reverse an overdose, naloxone remains largely
23 inaccessible.

24 (g) The Board of Supervisors hereby finds that the public interest is served by ensuring that
25 retail pharmacies in San Francisco stock a minimum number of opioid antagonists for purchase.

1
2 **SEC. 4802. DEFINITIONS.**

3 *For purpose of this Article 48, the following terms have the following meanings:*

4 *“City” means the City and County of San Francisco.*

5 *“Department” means the San Francisco Department of Public Health.*

6 *“Director” means the Director of the San Francisco Department of Public Health or the*
7 *Director’s designee.*

8 *“FDA” means the United States Food and Drug Administration.*

9 *“Opioid Antagonist” means Naloxone nasal spray (NARCAN®) or any other formulation of*
10 *naloxone hydrochloride or similar drug approved or authorized by the FDA for the treatment of an*
11 *opioid overdose.*

12 *“Pharmacist” means an individual licensed by the California State Board of Pharmacy to*
13 *engage in the practice of pharmacy.*

14 *“Retail Pharmacy” means a licensed pharmacy, as defined in subdivision (a) of Section 4037 of*
15 *the California Business and Professions Code, that is located in the City and dispenses drugs for retail*
16 *sale.*

17
18 **SEC. 4803. OPIOID ANTAGONIST STOCKING REQUIREMENT.**

19 *(a) Each Retail Pharmacy shall maintain a pharmaceutical stock of Opioid Antagonists*
20 *sufficient to fill at least two purchases of Opioid Antagonists by consumers.*

21 *(b) The following shall constitute a sufficient stock of Opioid Antagonist for purposes of this*
22 *Section 4803: (1) two boxes of nonprescription Opioid Antagonist; (2) two boxes of prescription Opioid*
23 *Antagonist; or (3) one box of prescription Opioid Antagonist and one box of nonprescription Opioid*
24 *Antagonist.*

1 (c) It shall be an affirmative defense to a violation of subsection (a) of this Section 4803 for a
2 Retail Pharmacy to demonstrate by a preponderance of the evidence that:

3 (1) No more than three days had elapsed since the Retail Pharmacy maintained a
4 pharmaceutical stock of Opioid Antagonists sufficient to fill at least two requests for Opioid
5 Antagonists; and

6 (2) During that three-day grace period, the Retail Pharmacy had ordered
7 replacement stock and was waiting for the supplier to fill the order.

8 (d) Retail Pharmacies shall post clear and legible signage advising customers of the
9 availability of Opioid Antagonists at the following locations:

10 (1) At all points of sale at which a Pharmacist dispenses pharmaceuticals; and

11 (2) If the Retail Pharmacy stocks nonprescription, over-the-counter Opioid
12 Antagonists, at all points of sale where the Retail Pharmacy sells nonprescription medication.

13 (e) The Department may develop model signage for use by Retail Pharmacies.

14
15 **SEC. 4804. ADMINISTRATION AND ENFORCEMENT.**

16 (a) This Article 48 shall be administered and enforced by the Department. The Director may
17 adopt regulations, guidelines, and forms to carry out the provisions and purposes of this Article 48.

18 (b) For purposes of assessing penalties for violation of this Article 48, each of the following
19 shall constitute a separate violation: (1) each day in which a Retail Pharmacy fails to maintain a
20 sufficient stock of Opioid Antagonists as required under section 4803(a), subject to the affirmative
21 defense set forth in Section 4803(c); and (2) each day in which a Retail Pharmacy fails to display the
22 signage required under Section 4803(d).

23 (c) The Director shall issue a notice of violation for violations of subsections (a) and (d) of
24 Section 4803. The Director may impose an administrative penalty of not less than \$250 and not more
25 than \$1,000 per violation. Administrative Code Chapter 100, "Procedures Governing the Imposition

1 of Administrative Fines,” is hereby incorporated in its entirety, except as it relates to the definition of a
2 violation and the calculation of penalty amounts, addressed in Sections 4804(b) and (c), and that the
3 Director shall appoint the hearing officer to conduct hearings for appeals.

4
5 **SEC. 4805. ENFORCEMENT BY CITY ATTORNEY.**

6 (a) The City Attorney may at any time institute civil proceedings for injunctive and monetary
7 relief, including civil penalties, against any person for violations of this Article 48, without regard to
8 whether the Director has issued a notice of violation, instituted abatement proceedings, scheduled or
9 held a hearing on a notice of violation, or issued a final decision.

10 (b) At any time, the Director may refer a case to the City Attorney’s Office for civil
11 enforcement, but a referral is not required for the City Attorney to bring a civil action under this
12 Section 4805.

13 (c) Any person that violates any provision of this Article 48 shall be enjoined and shall be
14 subject to a civil penalty of not less than \$250 and not more than \$1,000 for each violation, as defined
15 in Section 4804(b), which penalty shall be assessed and recovered in a civil action brought in the name
16 of the people of the City and County of San Francisco by the City Attorney in any court of competent
17 jurisdiction. In assessing the amount of the civil penalty, the court shall consider any one or more of
18 the relevant circumstances presented by any of the parties to the case, including but not limited to, the
19 following: the nature and seriousness of the misconduct giving rise to the violation, the number of
20 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
21 the willfulness of the defendant’s misconduct, and the defendant’s assets, liabilities and net worth.

22 (d) The prevailing party in any court case or special proceeding to enforce this Article 48 shall
23 recover reasonable attorneys’ fees if the City Attorney elects, at the initiation of the action, to seek
24 recovery of attorneys’ fees and provides notice of such intention to the adverse party or parties. In no
25

1 court case or special proceeding shall an award of attorneys' fees to a prevailing party exceed the
2 amount of reasonable attorneys' fees incurred by the City.

3 (e) Remedies under this Section 4805 are non-exclusive and cumulative to all other remedies
4 available at law or equity.

5
6 **SEC. 4806. UNDERTAKING FOR THE GENERAL WELFARE.**

7 In enacting and implementing Article 48, the City is assuming an undertaking only to promote
8 the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation
9 for breach of which it is liable in money damages to any person who claims that such breach
10 proximately caused injury.

11
12 **SEC. 4807. SEVERABILITY.**

13 If any section, subsection, sentence, clause, phrase, or word of Article 48, or any application
14 thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court
15 of competent jurisdiction, such decision shall not affect the validity of the remaining portions or
16 applications of this Article. The Board of Supervisors hereby declares that it would have passed this
17 Article and each and every section, subsection, sentence, clause, phrase, and word not declared invalid
18 or unconstitutional without regard to whether any other portion of these sections or application thereof
19 would be subsequently declared invalid or unconstitutional.

20
21 **SEC. 4808. NO CONFLICT WITH FEDERAL OR STATE LAW.**

22 Nothing in this ordinance shall be interpreted or applied so as to create any requirement,
23 power, or duty in conflict with any federal or state law.

1 Section 2. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 APPROVED AS TO FORM:
7 DAVID CHIU, City Attorney

8 By: _____
9 HENRY L. LIFTON
 Deputy City Attorney

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