

1 [Prohibiting Smoking in Enclosed Areas, Certain Unenclosed Areas, and Sports Stadiums.]

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3 **Ordinance updating findings based on recent studies; amending San Francisco Health**  
4 **Code Sections 1009.20, 1009.21, 1009.22, 1009.23, 1009.25, and 1009.81, and adding**  
5 **Sections 1009.26, 1009.27, 1009.28, and 1009.29, to prohibit smoking in 1) business**  
6 **establishments and bars regardless of whether owner-operated, 2) common areas of**  
7 **multi-unit housing complexes, 3) tourist lodging facilities, 4) tobacco shops, 5) charity**  
8 **bingo games, 6) taxicabs and other motor vehicles for hire, 7) unenclosed dining areas**  
9 **of restaurants, 8) service waiting areas, 9) areas within twenty feet of entrances to**  
10 **private, nonresidential buildings, 10) farmers markets, and 11) vehicles owned by the**  
11 **City and County of San Francisco; establishing obligations for property owners and**  
12 **managers to prevent smoking in prohibited areas, defining secondhand smoke from a**  
13 **business establishment located in a mixed-use residential and commercial building as**  
14 **a nuisance; adding administrative procedures and penalties; deleting criminal**  
15 **penalties; adding provisions for cost recovery and liens; adding provisions for private**  
16 **enforcement of the ordinance, and making conforming changes in the Police Code by**  
17 **repealing Sections 53, 53.1, and 1098, and in the Health Code by repealing Section**  
18 **1009.24.**

19 Note: Additions are *single-underline italics Times New Roman*;  
20 deletions are *~~strikethrough italics Times New Roman~~*.  
21 Board amendment additions are double underlined.  
22 Board amendment deletions are ~~strikethrough normal~~.

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

24 Section 1. The San Francisco Health Code is hereby amended by amending Sections  
25 1009.20, 1009.21, 1009.22, 1009.23, 1009.25, and 1009.81, adding Sections 1009.26,  
1009.27, 1009.28, and 1009.29, and repealing Section 1009.24, and the Police Code is

1 hereby amended by amending Section 1143 and repealing Sections 53, 53.1, and 1098, to  
2 read as follows:

3 **ARTICLE 19F: PROHIBITING SMOKING IN ENCLOSED AREAS, CERTAIN UNENCLOSED**  
4 **AREAS, AND SPORTS STADIUMS**

5 **SEC. 1009.20. FINDINGS.**

6 (a) The United States Surgeon General's ~~1986~~ 2006 Report on the Health  
7 Consequences of Involuntary Smoking reports the following:

8 (1) Smoking is the single greatest avoidable cause of disease and death.

9 (2) Secondhand smoke contains hundreds of chemicals known to be toxic or  
10 carcinogenic (cancer causing), including formaldehyde, benzene, vinyl chloride, arsenic, ammonia,  
11 and hydrogen cyanide.

12 (3) Children exposed to secondhand smoke are at an increased risk for sudden  
13 infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma.  
14 Smoking by parents causes respiratory symptoms and slows lung growth in their children.

15 (4) Concentrations of many cancer-causing and toxic chemicals are higher in  
16 secondhand smoke than in the smoke inhaled by smokers.

17 (5) Breathing secondhand smoke for even a short time can have immediate adverse  
18 effects on the cardiovascular system and interferes with the normal functioning of the heart, blood, and  
19 vascular systems in ways that increase the risk of a heart attack.

20 (6) The scientific evidence indicates that there is no risk-free level of exposure to  
21 secondhand smoke.

22 (7) Short exposures to secondhand smoke can cause blood platelets to become  
23 stickier, damage the lining of blood vessels, decrease coronary flow velocity reserves, and reduce heart  
24 rate variability, potentially increasing the risk of a heart attack.

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1                   (8) Secondhand smoke contains many chemicals that can quickly irritate and  
2 damage the lining of the airways. Even brief exposure can result in upper airway changes in healthy  
3 persons and can lead to increased and more frequent asthma attacks in children who already have  
4 asthma.

5                   (9) (1) Involuntary smoking Secondhand smoke is a cause of disease, including  
6 lung cancer, in healthy nonsmokers.

7                   (10) (2) The children of parents who smoke compared with the children of  
8 nonsmoking parents have an increased frequency of respiratory infections, increased  
9 respiratory symptoms, and slightly smaller rates of increase in lung function as the lung  
10 matures.

11                   (11) (3) The simple separation of smokers and nonsmokers within the same air space  
12 may reduce, but does not eliminate, the exposure of nonsmokers to environmental smoke. Eliminating  
13 smoking in indoor spaces protects nonsmokers from exposure to secondhand smoke. Separating  
14 smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of  
15 nonsmokers to secondhand smoke.

16                   (b) The California Air Resources Board issued a report in January 2006 that identified  
17 secondhand smoke as a toxic air contaminant with no safe level of exposure. Secondhand smoke has  
18 joined benzene, arsenic, and diesel exhaust on the Toxic Air Contaminant list. According to the report:

19                   (1) Each year in California, secondhand smoke is linked to: (A) 400 additional lung  
20 cancer deaths a year in nonsmokers; (B) 3,600 deadly heart attacks; and, (C) 31,000 asthma attacks in  
21 children.

22                   (2) Health effects causally associated with exposure to secondhand smoke include  
23 (A) breast cancer in younger, primarily premenopausal women; (B) asthma induction and exacerbation  
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1 in children and adults; (C) pre-term delivery; and (D) altered vascular properties associated with risk  
2 for heart attack.

3 (3) Concentrations of secondhand smoke in some outdoor locations can reach levels  
4 as high as indoor locations, depending on the number of cigarettes being smoked and wind conditions.

5 (4) According to the 2002-2004 California Student Tobacco Survey, 49 percent of  
6 youths reported being exposed to secondhand smoke from someone smoking in the same room during  
7 the previous seven days. According to the 2002 California Tobacco Survey, 11.9 percent of non-  
8 smoking Californian indoor workers reported having been exposed to secondhand smoke at work  
9 within the past two weeks, with 64.7 percent exposed on a daily basis.

10 (5) In 2005, 13.9 percent of San Francisco adults were smokers, including 7.5  
11 percent who were daily smokers and 6.4 percent who were occasional smokers. "Occasional smokers"  
12 are smokers who do not smoke on a daily basis.

13 (c) The 2003 Final Report on Tobacco Control Successes prepared by the Cancer  
14 Prevention and Control Program at the University of California, San Diego, for the California  
15 Department of Health Services found:

16 (1) 15.6 percent of Latinos, 11.3 percent of Asians, 9.5 percent of African  
17 Americans, and 10.4 percent of Whites were exposed to secondhand smoke in indoor workplaces within  
18 two weeks of answering the survey.

19 (2) In the home setting, African American children and adolescents were found to  
20 have the highest rate of exposure (14.3 percent) to secondhand smoke compared to 5.7 percent of  
21 Asians/Pacific Islanders, 8.5 percent of Latinos and 10.9 percent of Whites.

22 (3) Residents living in multi-unit housing complexes can be exposed to secondhand  
23 smoke that seeps from neighboring units through doorways, electrical sockets, cracks in the sealing,  
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1 shared ventilation systems, holes in wall plates and subfloor assemblies for electrical wiring, plumbing,  
2 and ductwork.

3 (b) (d) The Board of Supervisors finds and declares:

4 (1) Nonsmokers have no adequate means to protect themselves from the  
5 damage inflicted upon them when they involuntarily inhale tobacco smoke.

6 (2) Regulation of smoking in public places is necessary to protect the health,  
7 safety, welfare, comfort, and environment of nonsmokers.

8 (e) (e) It is, therefore, the intent of the Board of Supervisors, in enacting this Article, to  
9 protect ~~the~~ nonsmokers from environmental tobacco smoke and to eliminate smoking, as  
10 much as possible, in public places, and certain residential settings.

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## 12 **SEC. 1009.21. DEFINITIONS.**

13 Unless the term is specifically defined in this Article or the contrary stated or clearly  
14 appears from the context, the definitions set forth in this Section shall govern the interpretation  
15 of this Article. The definitions set forth in this Article shall be construed so as to make the  
16 prohibition against smoking set forth herein broadly applicable.

17 (a) "Bar" or "Tavern" means ~~an area~~ any facility primarily ~~which is~~ devoted to the  
18 serving of alcoholic beverages for consumption by patrons on the premises and in which the  
19 serving of food is only incidental to the consumption of such beverages. "Bar" or "Tavern"  
20 includes but is not limited to those facilities that are free standing, the bar portion of a restaurant, or a  
21 portion of a building used in conjunction with another use or within a hotel, motel, or similar transient  
22 occupancy establishment.

23 (b) "Business establishment" means any retail establishment, office, business,  
24 store, factory, warehouse, storage facility or other place operated as a commercial venture.

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1 The term includes any place where services are provided or goods are manufactured,  
2 distributed, processed, assembled, sold or displayed for sale on a wholesale or retail basis.  
3 The term also includes any place operated as part of the commercial venture, such as places  
4 that provide accounting, management, personnel, information processing, accounting,  
5 communication, financial and other support services that is owner operated, operated with  
6 employees, or operated with volunteers.

7 "Business establishment," whether owner operated, operated with employees or operated  
8 with volunteers, includes, but is not limited to: (1) automobile dealerships, furniture or other  
9 showrooms for the display of merchandise offered for sale; (2) grocery, pharmacy, specialty,  
10 department and other stores which sell goods or merchandise; (3) service stations, stores or  
11 shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or  
12 products; (4) barbershops, beauty shops, cleaners, laundromats and other establishments  
13 offering services to the general public; (5) video arcade, poolhall, and other amusement  
14 centers; (6) offices providing professional services such as legal, medical, dental, engineering,  
15 accounting and architectural services; (7) banks, savings and loan offices, and other financial  
16 establishments; (8) hotels and motels, and other places that provide accommodations to the  
17 public, subject to the exceptions set forth in Section 1009.23.

18 ~~"Business establishment" shall not include a separately enclosed business establishment directly~~  
19 ~~administered and operated on site by a person or persons who own or have an ownership interest in the~~  
20 ~~business if such establishment is smaller than five hundred square feet.~~

21 (c) "Child care facility" means a facility in which a person, at the request and  
22 consent of a parent or legal guardian, provides care during a part of any 24-hour period for  
23 compensation, whether or not such person is licensed.

24 (d) "Director" means the Director of Public Health or his or her designee.

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1           (e) "Dwelling Unit" means: (1) a dwelling space consisting of essentially complete  
2 independent living facilities for one or more persons, including, for example, permanent provisions for  
3 living and sleeping; (2) a room in group housing, even if such room lacks private cooking facilities and  
4 private plumbing facilities, such as rooms in senior citizen housing, single room occupancy or  
5 residential hotels, dorms, hostels, or shelters; or, (3) a housekeeping room as defined in the Housing  
6 Code;

7           ~~(f)(4)~~ "Educational facility" means any school or education institution, whether  
8 commercial or nonprofit, operated for the purpose of providing academic classroom  
9 instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic,  
10 musical or other cultural skills.

11           (g) "Enclosed" means: (1) any covered or partially covered space having more than 50  
12 percent of its perimeter area walled in or otherwise closed to the outside such as a covered porch with  
13 more than two walls, or (2) any space open to the sky ("uncovered") having more than 75 percent of  
14 its perimeter area walled in or otherwise closed to the outside such as a courtyard. But an uncovered  
15 space of 3,000 square feet or more shall not be considered enclosed, such as a field in an open-air  
16 arena.

17           (h) "Multi-Unit Housing Complex" means a public or private building, or portion thereof,  
18 containing two or more dwelling or other housing units. This definition includes, but is not limited to:  
19 1) a building with live/work units, as defined in the Planning Code; 2) apartment buildings,  
20 condominiums, senior citizen residences, nursing homes, housekeeping room/units, residential or single  
21 room occupancy hotels, "other housing" as defined in the Planning Code, and other multiple unit  
22 residential dwellings, except as permitted under Section 1009.23(a) of this Article. "Other housing" as  
23 defined in the Planning Code includes (a) group housing, boarding (which covers rooming houses  
24 where lodging is provided without individual cooking facilities, by prearrangement for a week or more  
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1 at a time and for six or more persons in a space not defined as a dwelling unit), (b) group housing for  
2 religious orders, (c) group housing for medical and educational institutions, (d) a hotel, inn or hostel;  
3 and (e) a motel, including an auto court, motor lodge, tourist court or other facility similarly identified.

4 (i) (e) "Nonprofit establishment" means any facility used for social, recreational, health  
5 care or similar services, or office, store, or other place operated by any corporation,  
6 unincorporated association or other entity created for charitable, philanthropic, educational,  
7 character building, political, social or other similar purposes, the net proceeds from the  
8 operation of which are committed to the promotion of the objects or purposes of the  
9 organization and not to private financial gain. A public agency is not a nonprofit entity.

10 (j) (f) "Person" means any individual person, firm, partnership, association,  
11 corporation, company, organization, or legal entity of any kind.

12 (k) "Residential hotel" has the same meaning as defined in Chapter 41 of the San Francisco  
13 Administrative Code, which is any building or structure that contains one or more residential hotel  
14 units as defined in (l), below, unless exempted by the Administrative Code. Residential hotels are  
15 further defined and regulated in the Residential Hotel Unit Conversion and Demolition Ordinance,  
16 Chapter 41 of the San Francisco Administrative Code.

17 (l) "Residential hotel unit" means any guest room, as defined in Chapter XII, Part II of the  
18 San Francisco Housing Code, which had been occupied by a permanent resident on September 23,  
19 1979, or any guest room designated as a residential unit pursuant to Chapter 41 of the San Francisco  
20 Administrative Code.

21 (m) (g) "Restaurant" means every enclosed restaurant, coffee shop, cafeteria, cafe,  
22 luncheonette, sandwich stand, soda fountain, or other enclosed eating establishment serving  
23 food to the general public.

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1            (n) (H) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or  
2 carrying any lighted smoking equipment for tobacco or any other weed or plant;

3            (o) (I) "Sports arena" means sports stadiums, gymnasiums, health spas, boxing  
4 arenas, swimming pools, roller and ice rinks, bowling alleys and similar places where the  
5 public assembles either to engage in physical exercise, participate in athletic competition or  
6 witness sports events.

7            (p) *"Tourist lodging facilities" means a retail use that provides tourist accommodations,*  
8 *including guest rooms or suites, which are intended or designed to be used, rented, or hired out to*  
9 *guests (transient visitors) intending to occupy the room for less than 32 consecutive days. This*  
10 *definition includes, but is not limited to, buildings containing six or more guest rooms designated and*  
11 *certified as tourist units under Chapter 41 of the San Francisco Administrative Code. For purposes of*  
12 *this Article, "tourist lodging facilities" include, but are not limited to, motels that contain guest rooms*  
13 *or suites which are independently accessible from the outside, with garage or parking space located on*  
14 *the lot, and designed for, or occupied by, automobile-traveling transient visitors, hotels, motels, youth*  
15 *hostels, bed and breakfast inns, and hotel and motel guest rooms. The term "tourist lodging facilities"*  
16 *includes all lobbies, offices and internal circulation to guest rooms and suites within the same enclosed*  
17 *building or buildings as the guest rooms or suites.*

18            (q) *"Tobacco Shop" means any store that engages in the sale of tobacco and tobacco-*  
19 *related products and any portion of any store devoted to the sale of tobacco and tobacco-related*  
20 *products and paraphernalia, including hookah pipes.*

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22            **SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN UNENCLOSED AREAS,**  
23 **CERTAIN VEHICLES, AND ENCLOSED STRUCTURES CONTAINING CERTAIN USES AND**  
24 **CERTAIN SPORTS STADIUMS.**

1 (a) Smoking is prohibited in buildings and enclosed structures, throughout the building  
2 or structure and in the common areas, such as the elevators, hallways, stairways, restrooms,  
3 conference and meeting rooms, and eating and break rooms, and certain unenclosed areas ~~which that~~  
4 contain any of the facilities or uses set forth below.

5 (1) Facilities owned or leased by the City and County of San Francisco; every  
6 commission, department or agency, with jurisdiction over such property shall adopt  
7 regulations or policies implementing the provisions of this Article; provided, however, with  
8 respect to facilities located outside the City and County of San Francisco, the regulations or  
9 policies shall prohibit smoking in enclosed areas during ~~those all~~ all ~~times that the public has access,~~  
10 ~~except that (A) in any enclosed area a designated smoking area may be provided if it is physically~~  
11 ~~separated from and no larger than the nonsmoking area, and (B) when the public does not have access~~  
12 ~~to an enclosed area, the provisions of Article 19 apply;~~

13 (2) Facilities in which the business of any governmental body or agency is  
14 conducted, including hearing rooms, courtrooms or places of public assembly;

15 (3) Polling places;

16 (4) Health facilities, including, but not limited to, hospitals, long term care  
17 facilities, doctors' and dentists' offices, inpatient rooms, and outpatient examination and  
18 treatment rooms;

19 (5) Educational facilities;

20 (6) Business establishments;

21 (7) Nonprofit establishments, except that persons qualifying under California  
22 Health and Safety Code Section 11362.75 et seq. to use medical marijuana may smoke medical  
23 marijuana on the premises of a ~~nonprofit medical marijuana buyer's club~~ Medical Cannabis  
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1 Dispensary with a valid permit issued by the Department of Public Health per Article 33 of the Health  
2 Code;

3 (8) Aquariums, galleries, libraries and museums;

4 (9) Child care facilities, except when located in private homes;

5 (10) Facilities used for exhibiting motion pictures, drama, dance, musical  
6 performance, lectures, or other entertainment;

7 (11) Sports arenas; ~~provided, however, that Subsection (b) shall govern sports~~  
8 ~~stadiums as defined in that subsection;~~

9 (12) Convention facilities;

10 (13) Restaurants, including the bar portion of the restaurant; subject to the  
11 provisions of Section 1009.24.

12 ~~(14) Ticketing, boarding and waiting areas of public transit systems, including bus,~~  
13 ~~train, trolley and cable car stops and shelters.~~

14 (14) Bars and Taverns;

15 (15) Tourist Lodging Facilities;

16 (16) Homeless Shelters;

17 (17) Tobacco Shops;

18 (18) Facilities used to conduct charity bingo games pursuant to Penal Code Section  
19 326.5, during such times that persons are assembled in the facility in connection with such games.

20 ~~Smoking is prohibited throughout the building or structure and in the common areas, including~~  
21 ~~the elevators, hallways, stairways, restrooms, conference and meetings rooms, and eating and break~~  
22 ~~rooms, if any.~~

23 ~~(b) No owner, manager, or operator of a sports stadium shall knowingly or intentionally~~  
24 ~~permit, and no person on the premises shall engage in, the smoking of tobacco products in any~~  
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1 ~~enclosed or open space at a sports stadium. except in (1) concourses and ramps outside seating areas,~~  
2 ~~(2) private suites and corridors to private suites, and (3) areas designated for parking. Any portion of a~~  
3 ~~sports stadium used as a bar or restaurant shall be governed by the provisions of this Article regulating~~  
4 ~~smoking in bars and restaurants. For purposes of this subsection, a sports stadium means a publicly~~  
5 ~~owned facility which has a seating capacity of at least 30,000 people.~~

6 (b) Smoking is prohibited at all times in taxicabs and other motor vehicles for hire as  
7 defined in the Police Code, whether owned or leased by the driver, whether or not occupied by  
8 one or more passengers, and whether or not in operation.

9 (c) Smoking is prohibited in unenclosed dining areas including sidewalk restaurant dining  
10 areas.

11 (d) Smoking is prohibited in service waiting areas, which are defined as any area designed to be  
12 or regularly used by one or more persons to receive or wait to receive a service, enter a public place,  
13 or make a transaction, whether or not such service includes the exchange of money, such as ATMs,  
14 bank teller windows, telephones, ticket lines, movie theater lines, concert lines, athletic event lines,  
15 performance event lines and cab stands, and including the ticketing, boarding and waiting areas of  
16 public transit systems, including bus, train, trolley and cable car stops and shelters.

17 (e) Smoking outdoors is prohibited within twenty feet of entrances, exits and operable windows  
18 and vents of private, nonresidential buildings where smoking is prohibited pursuant to this Article.

19 (f) Smoking is prohibited in enclosed common areas of multi-unit housing complexes, as defined  
20 in Section 1009.21(h), including, but not limited to, private apartment buildings, residential hotels,  
21 including Single Resident Occupancy hotels, SF Housing Authority buildings, HUD housing, senior  
22 housing, and condominiums. Enclosed common areas are those areas accessible to and usable by  
23 residents of different units and include but are not limited to common halls, elevators, covered parking  
24 areas, lobbies, waiting areas, interior stairwells and bathrooms, cooking, dining, lounge, laundry  
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1 facilities, recreation and lobby areas, except that smoking is permitted ten feet or more away from a  
2 door or window in an outdoor common area within the perimeter, a common hall open to the outdoors  
3 on at least one side, or courtyard of any multi-unit housing complex. Except for purposes of ingress  
4 and egress, the entry doors of private residential units shall be closed at any time that smoking is  
5 occurring within an individual dwelling unit of either a multi-unit housing complex or a mixed-use  
6 residential and commercial building where the door opens into an area where smoking is prohibited  
7 under this Section.

8 (g) Smoking is prohibited in all vehicles owned by the City and County of San Francisco.

9 (h) (e) It is unlawful for any person to smoke in any area where this Article prohibits  
10 smoking. It is unlawful for the owner of any property, facility or establishment subject to this  
11 Article or if a different person has the right to possession or management of such property,  
12 facility or establishment, for that person to permit any person to smoke in any area where  
13 smoking is prohibited by this Article, and the owner or manager had or should have had actual or  
14 constructive knowledge acquired by due diligence of the smoking.

15 (i) (d) ~~Any~~ ~~No~~ person who owns, operates or manages property is required to take the  
16 following will be deemed to be in violation of the requirements of this Article with respect to persons  
17 smoking in such areas over whom they have no right of direction and control if they have taken the  
18 following reasonable steps to prevent smoking where it is prohibited under this Code by such  
19 persons:

20 (1) ~~Poste~~d clear and prominent "no smoking" signs at each entrance to the  
21 premises and any area where smoking is prohibited. These signs must be written with letters of no  
22 less than one inch in height and include the international "No Smoking" symbol, consisting of a  
23 pictorial representation of a burning cigarette enclosed in a red circle, with a diameter of at least six  
24 inches, with a red bar across it.

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1                   (2) Requested, ~~when appropriate,~~ that ~~such any~~ person smoking in areas where  
2 smoking is prohibited under this Article refrain from smoking.

3                   An owner or manager of a multi-unit housing complex must additionally make the request in  
4 writing, if the person smoking is a tenant of the complex. For purposes of this subsection, a request  
5 that someone refrain from smoking does not require "reasonable steps" shall not include the physical  
6 ejection of a person from the premises.

7                   (3) Notify existing tenants of a multi-unit housing complex, within 90 days of the  
8 effective date of this legislation, of the smoking prohibitions contained in this Article.

9                   The duties described in Sections (1)-(3) of this Section are baseline requirements and are not  
10 the only responsibilities of owners or managers to prevent smoking in multi-unit housing complexes.

11 **SEC. 1009.23. EXCEPTIONS.**

12                   The following places shall not be subject to this Article:

13                   (a) ~~That portion of any hotel or motel lobby designated for smoking, provided that no hotel or~~  
14 ~~motel shall designate more than 25 percent of any lobby for smoking, and provided further that no~~  
15 ~~hotel or motel shall permit smoking in any room used for exhibit space;~~

16                   (b) ~~Hotel and motel guest~~ Tourist lodging facility room accommodations designated as  
17 smoking rooms, provided that ~~hotels and motels~~ tourist lodging facilities shall designate at least  
18 75 percent of the guest rooms in tourist lodging facilities as smoke free. The tourist lodging facility  
19 must permanently designate particular guest rooms as smoke free and ashtrays and matches are to be  
20 permanently removed from such smoke free rooms. Permanent "no smoking" signage shall be affixed  
21 in smoke free rooms. Where possible, designated smoke free rooms shall not be located on the same  
22 floor as smoking rooms. It is recommended that smoking be relegated to the top floor with at least 50  
23 percent of the rooms on the top floor designated as smoke free. ~~35 percent of the guest rooms as~~  
24 ~~nonsmoking;~~

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1           ~~(c) Facilities used to conduct charity bingo games pursuant to Penal Code Section 326.5~~  
2 ~~during such times that persons are assembled in the facility in connection with such games;~~

3           ~~(d) Banquet rooms in use for private social functions;~~

4           ~~(e) Bars. If a restaurant contains a bar, smoking shall be permitted in that portion that~~  
5 ~~constitutes the bar;~~

6           ~~(f) (b) Private homes, including but not limited to dwelling units, but not the common areas,~~  
7 ~~of multi-unit housing complexes and mixed-use residential and commercial buildings;~~

8           ~~(g) Any store that engages exclusively in the sale of tobacco and tobacco-related~~  
9 ~~products and any portion of any store devoted exclusively to the sale of tobacco and~~  
10 ~~tobacco-related products.~~

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12 ~~SEC. 1009.24. OPERATIVE DATE, INTERIM REGULATION, AND HARDSHIP EXEMPTION FOR~~  
13 ~~RESTAURANTS.~~

14           ~~(a) Notwithstanding the provisions of Section 1009.22, the provisions of this Article~~  
15 ~~prohibiting smoking in restaurants shall not be operative until January 1, 1995.~~

16           ~~(b) Prior to January 1, 1995, smoking shall be prohibited in restaurants in lobbies, waiting~~  
17 ~~areas, restrooms, and dining areas designated for nonsmoking. Unless the restaurant has been~~  
18 ~~designated entirely nonsmoking, the owner, manager or operator of a restaurant shall allocate~~  
19 ~~and designate by appropriate signage an adequate amount of space in these areas to meet the~~  
20 ~~demands of both smokers and nonsmokers, and shall inform all patrons that nonsmoking areas~~  
21 ~~are provided.~~

22           ~~(c) On or after January 1, 1995, any owner or manager of a restaurant may apply to the~~  
23 ~~Controller for an exemption from or modification of the requirements of this Article based on~~  
24 ~~significant financial hardship caused by compliance with this Article.~~

1 ~~(1) The applicant shall include all information required by the Controller. An~~  
2 ~~application for exemption or modification shall be accompanied by a reasonable fee~~  
3 ~~established by the Controller to cover the costs required to process the application and~~  
4 ~~make a determination. The Controller shall give the Department of Public Health an~~  
5 ~~opportunity to present relevant information with respect to each application.~~

6 ~~(2) The applicant shall have the burden of proof in establishing that this Article has~~  
7 ~~created an unreasonable economic effect on the applicant's business and threatens the~~  
8 ~~survival of the restaurant, and that this economic effect is not the result of seasonal~~  
9 ~~fluctuations or other conditions unrelated to the requirements of this Article. The~~  
10 ~~Controller shall act on the application pursuant to administrative regulations adopted~~  
11 ~~by the Controller. The Controller shall not be required to conduct a hearing on the~~  
12 ~~application. The Controller shall issue a decision in writing to the applicant and to any~~  
13 ~~other person who has requested a copy.~~

14 ~~(3) The decision of the Controller may be appealed within 15 days of the issuance of~~  
15 ~~the decision to the Board of Permit Appeals by the applicant or by any person who~~  
16 ~~deems that his or her interests or that the general public interest will be adversely~~  
17 ~~affected by the decision. The Board of Permit Appeals may concur in, overrule or modify~~  
18 ~~the Controller's decision. The provisions of Sections 8 through 16 of Part III of the San~~  
19 ~~Francisco Municipal Code shall govern the appeal process.~~

20 ~~(4) No exemptions or modifications shall be granted to any restaurant unless it has~~  
21 ~~been smokefree for at least one year. Notwithstanding any other provision of this Article,~~  
22 ~~any restaurant which has been granted an exemption or modification from the~~  
23 ~~requirements of this Article shall not permit smoking in more than 25 percent of the~~  
24 ~~seating or floor space of the restaurant.~~

1                   ~~(5) Exemptions granted by the Controller or the Board of Permit Appeals shall be valid~~  
2                   ~~for a period not to exceed 12 months and may be renewed upon application to the~~  
3                   ~~Controller. Applications for renewal shall be subject to the same requirements and~~  
4                   ~~procedures as initial applications.~~

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6       **SEC. 1009.25. VIOLATIONS AND PENALTIES.**

7                   (a) The presence of secondhand smoke from a business establishment as defined in Section  
8                   1009 located in a mixed-use residential and commercial building is a nuisance and a trespass and  
9                   shall constitute a violation of this Article.

10                  (b) The Director of Public Health may enforce the provisions of this Article against  
11                  violations by serving notice requiring the correction of any violation within a reasonable time  
12                  specified by the Director. Upon the violator's failure to comply with the notice within the time  
13                  period specified, (1) the Director may request the City Attorney to maintain an action for  
14                  injunction to enforce the provisions of this Article and for assessment and recovery of a civil  
15                  penalty for such violation and (2) the owner of the premises or the person with the right to  
16                  possession and management of the property may maintain an action for injunctive relief to  
17                  enforce the provisions of this Article and an action for damages. Damages may be awarded  
18                  up to \$500 a day for each day the violation occurs or is permitted to continue. It is necessary  
19                  to specify the amount of such damages because of the extreme difficulty that the owner or  
20                  other authorized person would have in establishing injury based on lost business, lost  
21                  productivity due to health injuries caused by tobacco smoke, and other costs arising because  
22                  of the health problems created by smoking.

23                  (c) The Director also may enforce the provisions of this Article by serving a Notice of Violation  
24                  requesting a person to appear at an administrative hearing before the Director at least 20 days after  
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1 the Notice of Violation is mailed. At the hearing, the person cited with violating the provisions of this  
2 Article shall be provided an opportunity to refute all evidence against him or her. The Director shall  
3 oversee the hearing and issue a ruling within 20 days of its conclusion. The Director's ruling shall be  
4 final.

5 ~~(d)(b)~~ Any person who violates or refuses to comply with the provisions of this Article  
6 shall be liable for a civil or administrative penalty, not to exceed \$500 for each day such  
7 violation is committed or permitted to continue, ~~which~~ A civil penalty shall be assessed and  
8 recovered in a civil action brought in the name of the people of the City and County of San  
9 Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed  
10 and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer  
11 of the City and County of San Francisco. An administrative penalty shall be assessed following an  
12 administrative hearing as described in subsection (c).

13 ~~(e) In addition to any other penalty or provision regarding enforcement set forth in this~~  
14 ~~Article, any violation of the prohibition set forth in this article is a misdemeanor punishable by a fine~~  
15 ~~not to exceed \$250 for a first violation, \$350 for a second violation within one year, and \$600 for a~~  
16 ~~third and for each subsequent violation within one year.~~

17

18 **SEC. 1009.26. COST RECOVERY.**

19 Any person who is found by an administrative hearing officer or a civil court to have violated  
20 the requirements of this Code or State law pertaining to smoking shall be liable to the City for costs  
21 incurred in abating the effects of the violation, taking other remedial action, or imposing and collecting  
22 penalties, including but not limited to administrative costs, costs of issuing an order, inspection costs,  
23 hearing officer costs, and reasonable attorneys' fees. The Controller's Office shall set the amount of  
24 actual costs, based on an accounting submitted by the Department of Public Health within ten business  
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1 days of the hearing or trial.

2 The hearing officer shall require in any order issued under this Section that the responsible  
3 party pay to the City the costs of any inspection or monitoring deemed necessary by the hearing officer  
4 because of the violation.

5  
6 **SEC. 1009.27. LIENS.**

7 (a) All final costs, fees, and administrative or civil penalties assessed against a person for  
8 violations of this Article shall be an obligation owed to the City by the person found to have violated  
9 State or local laws pertaining to smoking, and the owner of the property where the smoking occurred,  
10 provided that both have been given adequate notice of the alleged violation(s). Such obligation may be  
11 collected by means of the imposition of a lien against the property of the owner of the property or the  
12 person or business against whom the final administrative or civil penalty was assessed. The City shall  
13 mail to the owner of the property and to the person against whom the final amount was assessed (if  
14 different from the owner of the property) a notice of the amounts due and a warning that lien  
15 proceedings will be initiated against the property if the amounts are not paid within 30 days after  
16 mailing of the notice.

17 (b) Liens shall be created and assessed in accordance with Article XX of Chapter 10 of the San  
18 Francisco Administrative Code (commencing with Section 10.230).

19  
20 **SEC. 1009.28. PRIVATE ENFORCEMENT.**

21 (a) Any person acting for the interests of itself, its members, or the general public (hereinafter  
22 “the Private Enforcer”) may, upon prior notice to the party to be charged with a violation, bring a civil  
23 action to enforce this Article. At least twenty days before filing a civil lawsuit, the Private Enforcer  
24 must communicate in writing to the individual who he or she believes has violated this Article and must  
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1 include in that communication: 1) a specific description of the manner in which the Private Enforcer  
2 believes the Article has been violated; 2) a statement notifying the recipient that he or she is in  
3 violation of this Article or other applicable law; and 3) the Private Enforcer's intent to file a lawsuit to  
4 enforce this Article if the violation is not cured by a date set forth in the writing. If the party to whom  
5 the writing is addressed fails to take reasonable measures to correct a violation of the ordinance, the  
6 Private Enforcer may bring a civil action as described in this section. Upon proof of a violation, a  
7 court shall award to the Private Enforcer the following:

8 (1) Damages in the amount of either:

9 (i) upon proof, actual damages; or,

10 (ii) with insufficient or no proof of damages, \$100 for each violation of this

11 Article, up to a total of \$500 (hereinafter "Statutory Damages"). Unless otherwise specified in this  
12 Article, each day of a continuing violation shall constitute a separate violation. Notwithstanding any  
13 other provision of this Article, no Private Enforcer shall recover Statutory Damages based upon a  
14 violation of this Article if a previous claim brought on behalf of the general public for Statutory  
15 Damages and based upon the same violation has been adjudicated, whether or not the Private Enforcer  
16 was a party to that adjudication.

17 (2) Restitution of the gains obtained in violation of this Article.

18 (3) Exemplary damages, where it is proven by clear and convincing evidence that the  
19 defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health.

20 (b) The Private Enforcer may also bring a civil action to enforce this Article by way of a  
21 conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional  
22 judgment or an injunction.

23 (c) Notwithstanding any legal or equitable bar against a Private Enforcer seeking relief on its  
24 own behalf, a Private Enforcer may bring an action to enforce this Article solely on behalf of the

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1 general public. When a Private Enforcer brings an action solely on behalf of the general public,  
2 nothing about such an action shall act to preclude or bar the Private Enforcer from bringing a  
3 subsequent action based upon the same facts but seeking relief on its own behalf.

4 (d) Nothing in this Section shall prohibit the Private Enforcer from bringing a civil action in  
5 small claims court to enforce this Article, so long as the amount in demand and the type of relief sought  
6 are within the jurisdictional requirements of small claims court as set forth in California Code of Civil  
7 Procedure section 116.220.

8 (e) Nothing in this Section shall excuse an owner, manager, or other person from complying  
9 with the requirements of this Article.

10  
11 **SEC. 1009.29. SEVERABILITY.**

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

16  
17 **ARTICLE 19I: PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS**

18 **SEC. 1009.81. PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS.**

19 (a) Smoking is prohibited on any unenclosed area of property in the City and County  
20 of San Francisco that is open to the public and under the jurisdiction of the Recreation  
21 and Park Commission or any other City department if the property is a park, square,  
22 garden, sport or playing field, pier, or other property used for recreational purposes, or  
23 a farmers market.

1 ~~(b) Nothing in this Section is intended to change the provisions of Health Code Section~~  
2 ~~1009.22(b) regulating smoking in sport stadiums.~~

3 ~~(b)(e)~~ Each City department with jurisdiction over property subject to this Article shall  
4 post signs in appropriate locations to provide public notice that smoking is prohibited.

5 ~~(c)(d)~~ The provisions of this Article do not apply in any circumstance where federal or  
6 state law regulates smoking if the federal or state law preempts local regulation or if the  
7 federal or state law is more restrictive.

8 ~~(d)(e)~~ The provisions of this Article do not apply to playgrounds or tot lot sandbox  
9 areas, in and around which smoking is prohibited by California Health and Safety Code  
10 Section 104495.

11 ~~(f)(e)~~ The provisions of this Article do not apply to piers primarily used for commercial  
12 purposes.

13 ~~(g) [Reserved.]~~

14 The Police Code is hereby amended by deleting the following sections:

15 ~~SEC. 53. SMOKING PROHIBITED IN TAXICABS WHERE SIGN POSTED.~~

16 ~~(a) Purpose. Because the smoking of tobacco or any other substance is a danger to health and is a~~  
17 ~~cause of considerable annoyance and discomfort to those who must work in confined spaces, the Board~~  
18 ~~of Supervisors hereby declares that the purpose of this Section is to protect the health and welfare of~~  
19 ~~taxicab drivers who desire to work in a smoke free environment.~~

20 ~~(b) "No Smoking" Signs Required To Be Provided. Every person, firm or corporation operating a~~  
21 ~~taxicab or taxicabs, as defined in Section 1076 of this Code, pursuant to a permit issued by the Chief of~~  
22 ~~Police shall provide a "no smoking" sign and/or the international no smoking symbol for each vehicle~~  
23 ~~during all hours of operation and shall authorize the driver of the vehicle to determine whether or not~~  
24 ~~to post the no smoking sign or symbol in the vehicle.~~

1 ~~(c) Smoking Prohibited Where "No Smoking" Sign Posted. It shall be unlawful for any person to~~  
2 ~~smoke or carry a lighted cigar, cigarette or pipe in a taxicab wherein a "no smoking" sign and/or the~~  
3 ~~international no smoking symbol is posted in a place readily to be seen and read by the passengers.~~

4 ~~(d) No Private Right of Action. In undertaking the enforcement of this ordinance, the City and County~~  
5 ~~of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming,~~  
6 ~~nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money~~  
7 ~~damages to any person who claims that such breach proximately caused injury.~~

8 ~~(e) No Intent to Affect Rights and Obligations Under State Law. This Section is not intended to affect~~  
9 ~~any rights or obligations of taxicab operators or patrons conferred or imposed by state law.~~

10 ~~(Added by Ord. 74 86, App. 3/14/86; amended by Ord. 562 88, App. 12/27/88)~~

11  
12 ~~SEC. 53.1. PENALTY.~~

13 ~~Any person who shall violate the provisions of Section 53 of this Article shall be guilty of a~~  
14 ~~misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$25 or by~~  
15 ~~imprisonment in the County Jail for not more than 10 days, or by both such fine and imprisonment.~~

16 ~~(Added by Ord. 74 86, App. 3/14/86)~~

17  
18 SEC. 1143. REFUSAL TO CONVEY; REFUSAL TO OBEY ~~POSTED "NO SMOKING"~~  
19 ~~SIGNS~~ SMOKING BAN IN TAXICABS.

20 Notwithstanding the provisions of Section 1141 of this Article, a taxicab driver ~~who has posted a~~  
21 ~~"no smoking" sign or symbol in the vehicle in accordance with Section 53 of this Police code~~ may  
22 refuse to convey any person who refuses to obey the ban against smoking in taxicabs in Article  
23 19F of the Health Code. ~~"no smoking" sign; provided, however, that the taxicab driver brings the "no~~  
24 ~~smoking" sign or symbol to the attention of said person before he or she enters the taxicab.~~

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~~SEC. 1098. SMOKING BY DRIVERS PROHIBITED.~~

~~It shall be unlawful for any driver of a motor vehicle for hire in the City and County of San Francisco to smoke any cigar, pipe or cigarette, or to burn tobacco while passengers are occupying any of the seats in such vehicle.~~

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

By: \_\_\_\_\_  
Cecilia T. Mangoba  
Deputy City Attorney