

1 [Health Code - Ban on Smokeless Tobacco Use; Defining Tobacco Product to Include  
2 Devices for Using Tobacco]

3 **Ordinance amending the Health Code by banning the use of smokeless tobacco**  
4 **products in stadiums, sports arenas, and playing fields, and amending the definition of**  
5 **tobacco product to include a device or any portion of a device used to consume**  
6 **tobacco products; and making environmental findings.**

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

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

15 Section 1. The Planning Department has determined that the actions contemplated in  
16 this ordinance comply with the California Environmental Quality Act (California Public  
17 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
18 Board of Supervisors in File No. 150242 and is incorporated herein by reference.

19 Section 2. The Health Code is hereby amended by adding Article 19O, consisting of  
20 Sections 19O.1 through 19O.10, to read as follows:

21 **SEC. 19O.1. FINDINGS.**

22 *Public health authorities, including the Surgeon General and the National Cancer Institute,*  
23 *have found that smokeless tobacco use is hazardous to health and can easily lead to nicotine addiction.*  
24 *The National Cancer Institute states that chewing tobacco and snuff contain 28 cancer-causing agents*  
25

1 and the U.S. National Toxicology Program has established smokeless tobacco as a “known human  
2 carcinogen.”

3 The National Cancer Institute and the International Agency for Research on Cancer report that  
4 use of smokeless tobacco causes oral, pancreatic, and esophageal cancer; and may also cause heart  
5 disease, gum disease, and oral lesions other than cancer, such as leukoplakia (precancerous white  
6 patches in the mouth).

7 Youth participation in sports has many health benefits including the development of positive  
8 fitness habits, reducing obesity, and combating the epidemic of early onset diabetes. 45 percent of all  
9 American youth play in an agency-sponsored sports league such as Little League baseball or Pop  
10 Warner football—that figure represents 22 million children each year who are influenced by actively  
11 participating in organized sporting events.

12 But youth players and spectators are also vulnerable to developing a potentially deadly habit,  
13 the use of smokeless tobacco. Smokeless tobacco is strongly associated with playing sports particularly  
14 with a legacy of decades of association with baseball through marketing tie-ins and regular use of the  
15 product by players. In a 2012 report, the Centers for Disease Control and Prevention (CDC) concluded  
16 that, “Athletes serve as role models for youth, and smokeless tobacco manufacturers have used  
17 advertising, images, and testimonials featuring athletes and sports to make smokeless tobacco products  
18 appear attractive to youth. Children and teens closely observe athletes’ actions, including their use of  
19 tobacco products, and are influenced by what they see. Adolescents tend to mimic the behaviors of  
20 those they look up to and identify with, including baseball players and other athletes.”

21 In a letter to former Major League Baseball Commissioner Bud Selig following the 2014 death  
22 of baseball icon Tony Gwynn due to salivary gland cancer, nine leading health care organizations,  
23 including the American Medical Association, American Cancer Society, American Lung Association,  
24 American Heart Association, Campaign for Tobacco-Free Kids, and American Dental Association,  
25 stated that, “Use of smokeless tobacco endangers the health of major league ballplayers. It also sets a

1 terrible example for the millions of young people who watch baseball at the ballpark or on TV and  
2 often see players and managers using tobacco.”

3 Professional and college football players as well as those participating in wrestling, ice hockey,  
4 and lacrosse also have been shown to use smokeless tobacco products at high rates.

5 The CDC Youth Risk Behavioral Surveillance Report found that nationally 14.7% of high-  
6 school boys and 8.8 % of all high-school students reported using smokeless products in 2013. In San  
7 Francisco, 3.3% of high-school students reported current use of smokeless tobacco in 2013. Each year,  
8 about 415,000 kids nationally ages 12-17 use smokeless tobacco for the first time.

9 Smokeless tobacco products are heavily advertised and promoted, with the top five smokeless  
10 tobacco companies in the U.S. more than tripling their total advertising and marketing expenditures  
11 from 1998 to 2011. The Federal Trade Commission reports that in 2011, these smokeless tobacco  
12 companies spent \$451.7 million to advertise and promote their products.

13 Flavored tobacco products are known to be attractive to youth and flavored smokeless tobacco  
14 products have increased in the market 72% between 2005 and 2011, and contributed to 59.4% of total  
15 growth of the smokeless tobacco market. Smokeless tobacco products are viewed by young adults  
16 positively because they come in flavors and in attractive packaging, and are promoted as recreational,  
17 convenient, concealed, modern, and fun.

18 Tobacco use has been prohibited in minor league baseball games since 1993 and in the  
19 National Collegiate Athletic Association since 1994 (which also adopted a zero-tolerance policy in  
20 2002); the Little League World Series is tobacco-free, and the San Francisco Unified School District  
21 policies prohibit use of tobacco, including smokeless tobacco, during athletic events by players and  
22 coaches since 1996. Nearly 1,000 college campuses nationwide are tobacco-free. Research shows that  
23 students, faculty, and staff looking to stop their nicotine habits are more likely to do so in an  
24 environment that prohibits all tobacco use.

1 The entire University of California system (10 campuses) is tobacco-free and smoke-free,  
2 including athletic fields and stadiums. Sacramento State University, Santa Clara University, and San  
3 Jose State University all have plans in place to become tobacco-free during 2015.

4 The following Major League Baseball stadiums have instituted various forms of tobacco-free  
5 policies: the Milwaukee Brewers at Miller Park, Saint Louis Cardinals at Busch Stadium, the Seattle  
6 Mariners at Safeco Field, and the Cleveland Indians at Progressive Field. AT&T Park in San  
7 Francisco is a smoke-free facility in accordance with Article 19F of the Health Code, which prohibits  
8 smoking anywhere in the ballpark, including vaporized e-cigarette smoking. ~~The Major League~~  
9 ~~Baseball Players Association~~ publically supports banning the use of smokeless tobacco products as  
10 a means of protecting the health of their players and youth. ~~the public.~~

11 Use of smokeless tobacco can also interfere with the enjoyment of spectators and others using  
12 sports fields. Users of two forms of smokeless tobacco, snuff and chewing tobacco, let the tobacco sit in  
13 their mouth while they suck on the tobacco juices, spitting often to get rid of the saliva that builds up  
14 creating unsightly and offensive conditions for others.

15 Research supports that changing policy, environment, and social norms regarding smokeless  
16 tobacco use can positively influence young people and reduce use. Coaches and players at all levels,  
17 especially professionals, can become positive role-models to young players by reducing and/or ceasing  
18 their use, reinforcing existing smokeless tobacco bans, and participating in educating youth on the  
19 health risks of smokeless tobacco.

20 **SEC. 190.2. DEFINITIONS.**

21 “Director” means the Director of Health or his or her designee.

22 “School” means a public or private middle, junior high or high school, or a school  
23 combining some or all of the above school grades, or a college or university.

24 “Tobacco Product” means (1) any product containing, made, or derived from tobacco or  
25 nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed,

1 dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including, but not limited  
2 to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis or snuff; (2) any device  
3 or component, part, or accessory that delivers nicotine alone or combined with other substances to the  
4 person using the device including but not limited to electronic cigarettes, cigars, or pipes, or hookah,  
5 whether or not the device or component is sold separately. "Tobacco Product" does not include  
6 any product that has been approved by the United States Food and Drug Administration for use as a  
7 tobacco cessation product or for other therapeutic purposes where such product is marketed and  
8 sold solely for such an approved purpose.

9 **SEC. 190.3. PROHIBITING THE USE OF TOBACCO PRODUCTS AT ATHLETIC**  
10 **VENUES.**

11 (a) The use of Tobacco Products is prohibited on all properties that are if (1) the property is  
12 designated or otherwise identified as being a sport or playing field for organized sports and (2)  
13 subject to the prohibition on smoking contained in is prohibited at the location by Article 19I of  
14 the Health Code, "Prohibiting Smoking in City Park and Recreational Areas and Farmers' Markets,"

15 (b) No owner, manager, or operator of a The use of Tobacco Products is prohibited if  
16 the property is a "sports arena" including stadiums as defined in Article 19F of the Health Code  
17 shall knowingly or intentionally permit, and no person on the premises shall engage in the use  
18 of tobacco products in any enclosed or open part of the sports arena.

19 **SEC. 190.4. RULES AND REGULATIONS.**

20 The Director, after a noticed public hearing and consultation with the Director of the  
21 Recreation and Park Commission, may adopt rules and regulations to carry out the provisions of this  
22 Article 19O.

23 **SEC. 190.5. ENFORCEMENT.**

24 (a) Any person who violates this Article 19O is subject to enforcement under Article 19I of  
25 the Health Code Violations of Section 190.3(a) that occur on where the property is owned or

1 under the jurisdiction of the City, including but not limited to the Recreation and Park  
2 Commission, are subject to the enforcement provisions, remedies and fines set forth in Article  
3 19I of the Health Code.

4 (b) Violations of Section 19O.3(b) are subject to the enforcement provisions, penalties,  
5 remedies and fines set forth in Use of smokeless tobacco products where prohibited on  
6 property other than locations covered by Section 19O.3(a) shall be enforced under Article 19F  
7 of the Health Code.

8 **SEC. 19O.6. SIGNS.**

9 Any person who owns, operates, or manages property subject to this Article 19O is required to  
10 post clear and prominent “no use of smokeless tobacco products” signs at each entrance to the  
11 property. The Director shall specify the contents, size, and any other information that he or she  
12 believes necessary in the Rules and Regulations issued under this Article.

13 **SEC. 19O.7. PREEMPTION.**

14 Nothing in this Article 19O shall be interpreted or applied as to create any requirement, power,  
15 or duty in conflict with any federal or state law.

16 **SEC. 19O.8. SEVERABILITY.**

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

24 **SEC. 19O.9. UNDERTAKING FOR THE GENERAL WELFARE.**

1 In enacting and implementing this Article 19O, the City is assuming an undertaking only to  
2 promote the general welfare. It is not assuming nor is it imposing on its officers and employees an  
3 obligation for breach of which it is liable in money damages to any person who claims that such breach  
4 proximately caused injury.

5 **SEC. 19O.10. OPERATIVE DATE.**

6 This Article 19O shall become operative on January 1, 2016.

7 Section 3. The Health Code is hereby amended by revising Article 19F, Section  
8 1009.22, to read as follows:

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

11 \* \* \* \*

12 **SEC.1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES,**  
13 **CERTAIN UNENCLOSED AREAS, ~~AND~~ ENCLOSED STRUCTURES CONTAINING**  
14 **CERTAIN USES, AND ~~CERTAIN AREAS OF~~ SPORTS STADIUMS.**

15 \* \* \* \*

16 (b) No owner, manager, or operator shall knowingly and intentionally permit, and no  
17 person on the premises shall engage in, the smoking of tobacco products in any enclosed or  
18 open space at a sports stadium. ~~except in (1) ramps outside seating areas, (2) private suites and~~  
19 ~~corridors to private suites and corridors to private suites, and (3) areas designated for parking. Any~~  
20 ~~portion of a sports stadium used as a bar, restaurant, or service area shall be governed by this Article.~~  
21 ~~For purposes of this subsection, a sports stadium means a facility which has a seating capacity of at~~  
22 ~~least 30,000 people.~~

23 \* \* \* \*

24 Section 4. The Health Code is hereby amended by revising Article 19H, Section  
25 19H.2, to read as follows:

1                                   **ARTICLE 19H: PERMITS FOR THE SALE OF TOBACCO**

2                                   \* \* \* \*

3                                   **SEC. 19H.2. DEFINITIONS.**

4                                   \* \* \* \*

5                                   “Tobacco Product” means (1) any product containing, made, or derived from tobacco or  
6 nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed,  
7 dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including, but not limited  
8 to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis or snuff; (2) any device  
9 or component, part, or accessory that delivers nicotine alone or combined with other substances to the  
10 person using the device including but not limited to electronic cigarettes, cigars, or pipes, or hookah,  
11 whether or not the device or component is sold separately. “Tobacco Product” does not include  
12 any product that has been approved by the United States Food and Drug Administration for use as a  
13 tobacco cessation product or for other therapeutic purposes, where such product is marketed and  
14 sold solely for such an approved purpose.

15                                   \* \* \* \*

16                                   Section 5. Effective and Operative Dates. This ordinance shall become effective 30  
17 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
18 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
19 or the Board of Supervisors overrides the Mayor’s veto of the ordinance. This ordinance shall  
20 become operative on January 1, 2016.

21                                   Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
25



1 additions, and Board amendment deletions in accordance with the “Note” that appears under  
2 the official title of the ordinance.

3

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

6 By: \_\_\_\_\_  
7 ALEETA M. VAN RUNKLE  
8 Deputy City Attorney

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