

1 [Health Code - No Smoking in Multi-Unit Housing Complexes]

2
3 **Ordinance amending the Health Code to prohibit smoking inside all private dwelling**
4 **units in multi-unit housing complexes containing ~~three~~ or more units and all common**
5 **areas; remove the exception for child care facilities located in private homes; exempt**
6 **smoking of medicinal cannabis for a medicinal cannabis patient who possesses a**
7 **physician's recommendation to smoke medicinal cannabis for medical purposes;**
8 **require the Department of Public Health (DPH) to initiate a public information campaign**
9 **to raise awareness of the smoking prohibition; require DPH to initiate the imposition of**
10 **administrative penalties by issuance of a notice of violation in lieu of a citation;**
11 **suspend the provision of the Health Code (mooted by this Ordinance) which requires**
12 **owners or managers of multi-unit housing complexes to provide certain disclosures**
13 **regarding whether smoking is authorized in certain units; and affirm the Planning**
14 **Department's determination under the California Environmental Quality Act.**

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

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

23 Section 1. Environmental Findings.

24 The Planning Department has determined that the actions contemplated in this
25 ordinance comply with the California Environmental Quality Act (California Public Resources
Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. 201265 and is incorporated herein by reference. The Board affirms
2 this determination.

3 Section 2. The Health Code is hereby amended by revising Sections 1009.20,
4 1009.21, 1009.22, 1009.23, 1009.25, 1009.26, 1009.29, and 1009.37, to read as follows:

5

6 **SEC. 1009.20. FINDINGS.**

7 * * * *

8 (d) The Board of Supervisors finds and declares:

9 (1) Nonsmokers have no adequate means to protect themselves from the damage
10 inflicted upon them by secondhand smoke.

11 (2) Regulation of smoking in public places *and all private dwelling units in multi-unit*
12 *housing complexes containing 3 or more units* is necessary to protect the health, safety, welfare,
13 comfort, and environment of nonsmokers.

14 (e) It is, therefore, the intent of the Board of Supervisors, in enacting this Article 19F,
15 to protect nonsmokers from secondhand smoke and to eliminate smoking, as much as
16 possible, in public places, and certain residential settings.

17

18 **SEC. 1009.21. DEFINITIONS.**

19 * * * *

20 (k) "Multi-unit housing complex" means a public or private building, or portion thereof,
21 containing ~~two~~ three or more dwelling or other housing units. This definition includes, but
22 is not limited to: 1) a building with live/work units, as defined in the Planning Code; 2)
23 apartment buildings, condominiums, senior citizen residences, nursing homes, housekeeping
24 room/units, residential or single room occupancy hotels, "other housing" as defined in the
25 Planning Code, and other multiple unit residential dwellings, except as permitted under

1 Section 1009.23~~(a)~~ of this Article 19F. "Other housing" as defined in the Planning Code
2 includes (a) group housing, boarding (which covers rooming houses where lodging is provided
3 without individual cooking facilities, by prearrangement for a week or more at a time and for
4 six or more persons in a space not defined as a dwelling unit), (b) group housing for religious
5 orders, (c) group housing for medical and educational institutions, (d) a hotel, inn or hostel;
6 and (e) a motel, including an auto court, motor lodge, tourist court or other facility similarly
7 identified.

8 * * * *

9 **SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES,**
10 **CERTAIN UNENCLOSED AREAS, ENCLOSED STRUCTURES CONTAINING CERTAIN**
11 **USES, AND SPORTS STADIUMS.**

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

16 * * * *

17 (9) Child care facilities, ~~except when located in private homes,~~ including those located
18 in private homes;

19 * * * *

20 (f) Smoking in residential buildings.

21 (1) Smoking is prohibited in ~~enclosed common areas of~~ enclosed common
22 areas of multi-unit housing complexes, as defined in Section 1009.21(k), including, but not
23 limited to, private apartment buildings, residential hotels, including Single Resident
24 Occupancy hotels, SF Housing Authority buildings, HUD housing, senior housing, and
25 condominiums. ~~This prohibition shall extend to private dwelling units in multi-unit housing~~

1 complexes, and to all common areas in multi-unit housing complexes (including, without
2 limitation, ~~Enclosed common areas are those areas accessible to and usable by residents of different~~
3 ~~units and include but are not limited to~~ Enclosed common areas are those accessible to and
4 usable by residents of different units and include but are not limited to common halls,
5 elevators, covered parking areas, lobbies, waiting areas, ~~interior~~ stairwells, and bathrooms,
6 cooking, dining, lounge, laundry facilities, recreation and lobby areas, patios, and balconies),
7 except that smoking is permitted 15 feet or more away from a door or window, in an
8 outdoor common area within the perimeter, ~~a common hall open to the outdoors on at least one~~
9 ~~side, or courtyard of any multi-unit housing complex. Except for purposes of ingress and egress, the~~
10 ~~entry doors of private residential units shall be closed at any time that smoking is occurring within an~~
11 ~~individual dwelling unit of either a multi-unit housing complex or a mixed-use building where the door~~
12 ~~opens into an area where smoking is prohibited under this Section.~~

13 (2) In multi-unit housing complexes containing three or more dwelling or
14 other housing units, smoking is prohibited in the private dwelling or housing units.
15 Notwithstanding the foregoing sentence, it is not prohibited for a medicinal cannabis patient
16 who possesses a physician's recommendation to smoke medicinal cannabis for medical
17 purposes in such private dwelling or housing units. For purposes of this subsection (f)(2),
18 "medicinal cannabis" has the meaning set forth in Section 1602 of the Police Code, as may be
19 amended from time to time.

20 * * * *

21 (h) It is unlawful for any person to smoke in any area where this Article 19F prohibits
22 smoking. It is unlawful for the owner of any property, facility, or establishment subject to this
23 Article 19F, or if a different person has the right to possession or management of such
24 property, facility, or establishment, for that person, to permit any person to smoke in any area
25 where smoking is prohibited by this Article 19F, and if the owner or manager had or should

1 have had actual or constructive knowledge acquired by due diligence of the smoking. This
2 subsection (h) does not require a property owner or manager of a business to enforce a
3 smoking prohibition outside the business against persons who are not patrons of the
4 business, or a property owner or manager of a multi-unit housing complex to enforce a
5 smoking prohibition outside the building against persons who are not tenants or owners of
6 owner-occupied units of the building.

7 (i) Any person who owns, operates, or manages property is required to take the
8 following steps to prevent smoking on that property where it is prohibited under this ~~Code~~
9 Article 19F:

10 (1) Post clear and prominent signs at each entrance to the premises no higher
11 than eight 8 feet and no lower than five 5 feet, and within 10 feet of the door or the most
12 appropriate place for visibility from outside, that read "Smoking only 1) at the curb, or 2) if no
13 curb, at least 15 ft. from entrances, exits, operable windows, and vents" in letters no less than
14 one-half inch in height and include 1) the international "No Smoking" symbol, consisting of a
15 pictorial representation of a burning cigarette enclosed in a circle, with a diameter of at least
16 three inches, with a bar across it, and 2) a statement at the bottom of the sign that reads "SF
17 Health Code Article 19F" in font no less than one-eighth inch in height. Persons that own,
18 manage, or operate property that is LEED ("Leadership in Energy and Environmental Design")
19 certified that has a smoking distance requirement greater than that specified in this Article 19F
20 shall post signs conforming to all the requirements in this subsection (i)(1) ~~Section~~ that state that
21 smoking ~~only~~ is allowed only at that greater distance from the ~~exists~~, entrances, and operable
22 windows.

23 (2) Post clear and prominent "no smoking" signs in any area on the premises
24 where smoking is prohibited. For multi-unit housing complexes, the signs need only be posted
25 in ~~the~~ all common areas ~~building lobby, common mailbox area, or common elevator.~~

1 (3) Request that any person smoking in areas where smoking is prohibited under
2 this Article 19F refrain from smoking. But this subsection (i)(3) does not ~~require a property~~
3 ~~owner or manager of a multi-unit housing complex of less than 16 units to make the request that a~~
4 ~~person refrain from smoking unless the owner or manager observes the person smoking in areas where~~
5 ~~smoking is prohibited under this Article 19F, nor does this subsection (i)(3)~~ require a property owner
6 or manager of a business to enforce the smoking prohibition in Section 1009.22(d) outside a
7 business by persons who are not patrons of the business, or a property owner or manager of
8 a multi-unit housing complex to enforce a smoking prohibition outside the building by persons
9 who are not tenants or owners of owner-occupied units of the building.

10 Upon receipt of a written complaint from a tenant, owner of an owner-occupied unit,
11 or the Department of Public Health, or when any person is observed smoking where smoking
12 is prohibited, an owner or manager of a multi-unit housing complex must post a notice in the
13 building lobby, common mailbox area, or common elevator for a period of not less than 10 ~~ten~~
14 days, advising that a person tenant has been observed smoking ~~ins~~ a portion of the building
15 where smoking is prohibited under ~~San Francisco Health Code~~ this Article 19F, and requesting
16 that all people tenants refrain from smoking in those areas. If there is no common building
17 lobby, common mailbox area, or common elevator, then the owner or manager of a multi-unit
18 housing complex may provide notice to tenants or owners of owner-occupied units in another
19 reasonable manner. If the owner or manager of a multi-unit housing complex knows the identity
20 of the person tenant who was smoking in a prohibited area, the owner or manager of a multi-unit
21 housing complex must additionally make the request to the tenant or owner of an owner-occupied
22 unit in writing, and keep a record of the request for a ~~reasonable~~ period of two-years ~~time~~. For
23 purposes of this subsection (i)(3), a request that someone refrain from smoking does not
24 require the physical ejection of a person from the premises.

1 (4) Notify all tenants and owners of owner-occupied units ~~existing tenants~~ of a multi-unit
2 housing complex, within 90 days of the effective date of the ordinance in Board File No. 201265,
3 amending this Section 1009.22(f)~~this legislation~~, of the smoking prohibitions contained in this
4 Article 19F. In addition, notify all prospective tenants and prospective owners of owner-occupied units
5 of the smoking prohibitions contained in this Article 19F.

6 (5) Remove any ashtrays or ash receptacles from all common areas in multi-unit
7 housing complexes where smoking is prohibited ~~inside the premises~~. No persons, employer,
8 business, or nonprofit entity shall knowingly or intentionally permit the presence or placement
9 of any ashtrays or ash receptacles within any enclosed common area in a multi-unit housing
10 complex where smoking is prohibited.

11 The duties described in ~~Sections (1)-(5) of this subsection (i) Section~~ are baseline
12 requirements and are not the only responsibilities of owners or managers to prevent smoking
13 in multi-unit housing complexes.

14 (j) Violation of any part of this Article 19F is not grounds for eviction of residential
15 tenants. Nor does it require a landlord to change terms of an existing tenancy so as to prohibit
16 smoking in a multi-unit housing complex.

17 (k) If the owner or manager has complied with all the requirements in this Article
18 19F, smoking in a multi-unit housing complex where prohibited under this Article 19F shall not
19 be considered a substantial reduction in housing services that would qualify a tenant for a
20 reduction in rent under ~~San Francisco~~ Administrative Code Chapter 37.

21
22 **SEC. 1009.23. EXCEPTIONS.**

23 The following places shall not be subject to this Article 19F:

24 * * * *

1 (b) Residential buildings that contain one or two dwelling units. *Private homes,*
2 *including but not limited to dwelling units, but not the common areas, of multi-unit housing complexes*
3 *and mixed-use buildings.* Residential buildings containing only one dwelling or housing unit,
4 except where such building is used as a child care facility.

5 * * * *

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

8 (a) **Civil Enforcement.** The Director of Public Health may enforce the provisions of
9 this Article 19F against violators by serving ~~a notice~~ Notice of Violation as described in subsection
10 (b) requiring the correction of any violation within a reasonable time specified by the Director.
11 Upon the violator's failure to comply with the ~~notice~~ Notice of Violation within the time period
12 specified, ~~(1)~~ the Director may request the City Attorney to maintain an action for injunction to
13 enforce the provisions of this Article 19F and for assessment and recovery of a civil penalty for
14 such violation. ~~and (2) the owner of the premises or the person with the right to possession and~~
15 ~~management of the property may maintain an action for injunctive relief to enforce the provisions of~~
16 ~~this Article 19F and an action for damages. Damages may be awarded up to \$500 a day for each day~~
17 ~~the violation occurs or is permitted to continue. It is necessary to specify the amount of such damages~~
18 ~~because of the extreme difficulty that the owner or other authorized person would have in establishing~~
19 ~~injury based on lost business, lost productivity due to health injuries caused by tobacco smoke, and~~
20 ~~other costs arising because of the health problems created by smoking.~~ Any civil penalties collected
21 under this Article 19F shall be credited to the Public Health Environmental Health Code
22 Compliance Fund, authorized by ~~San Francisco~~ Administrative Code Section 10.100-193.
23 ~~—(b) Administrative Enforcement. The Director also may enforce the provisions of this Article by:~~
24 ~~—(1) Serving a Notice of Violation requesting a person to appear at an administrative hearing~~
25 ~~before the Director at least 20 days after the Notice of Violation is mailed. At the hearing, the person~~

1 ~~cited with violating the provisions of this Article shall be provided an opportunity to refute all evidence~~
2 ~~against him or her. The Director shall oversee the hearing and issue a ruling within 20 days of its~~
3 ~~conclusion. The Director's ruling shall be final; or,~~

4 ~~— (2) Issuing a citation under San Francisco Administrative Code Chapter 100, "Procedures~~
5 ~~Governing the Imposition of Administrative Fines," which is hereby incorporated in its entirety and~~
6 ~~shall govern the imposition, enforcement, collection, and review of administrative citations issued to~~
7 ~~enforce this Article, and any rule or regulation adopted pursuant to this Article, in addition to the other~~
8 ~~enforcement mechanisms authorized by this Article, provided, however, that:~~

9 ~~— (i) Each day a violation is committed or permitted to continue shall constitute a separate~~
10 ~~violation;~~

11 ~~— (ii) The Director of Public Health shall appoint the hearing officer to conduct hearings for~~
12 ~~appeals;~~

13 ~~— (iii) The fine for any violation issued pursuant to this section shall be paid to the Treasurer of~~
14 ~~the City and County of San Francisco and credited to the Public Health Environmental Health Code~~
15 ~~Compliance Fund, authorized by San Francisco Administrative Code Section 10.100-193;~~

16 ~~— (iv) The Director may recover any costs and fees, including but not limited to attorneys' fees, for~~
17 ~~enforcement initiated through this Section and authorized under this Article; and,~~

18 ~~— (v) The penalty amounts for citations issued under Administrative Code Chapter 100 shall be the~~
19 ~~same as those set forth in subsection (c).~~

20 (b) **Administrative Enforcement.** Administrative penalties shall be assessed and collected
21 by the Department of Public Health as set forth in this subsection (b).

22 (1) Any Person who violates this Article 19F shall be subject to an administrative
23 penalty imposed by order of the Director of Public Health, not to exceed \$1,000. Each and every day
24 that a violation exists constitutes a separate and distinct violation for which an administrative penalty
25 may be imposed. In assessing the amount of the administrative penalty, the Director of Public Health

1 may consider any one or more of the following: the nature and seriousness of the misconduct, the
2 number of violations, the persistence of the misconduct, the length of time over which the misconduct
3 occurred, and the willfulness of the violator's misconduct.

4 (2) If the Director of Public Health determines that a person violated this Article
5 19F, the Director shall issue a Notice of Violation to the person. The Notice of Violation shall contain
6 the following information: a description of circumstances or conditions constituting the violation; the
7 date by which the person must correct the violation; the amount of the administrative penalty that the
8 Director will impose daily until such time as the person has demonstrated to the satisfaction of the
9 Director that the violation has been corrected; and the right to seek administrative review of the Notice
10 of Violation by filing an appeal within 30 days of the date that the Notice of Violation is served, to
11 challenge the Director's determination and/or the proposed administrative penalty.

12 (3) If no appeal is timely filed, the right to appeal shall be waived, and the
13 Director's determination shall become final. The failure to timely file an appeal shall constitute a
14 failure to exhaust administrative remedies and shall preclude judicial review of the validity of the
15 enforcement action. Absent a timely appeal, the Director shall issue an order imposing the
16 administrative penalty, which shall be due and payable within 15 days of the date of the order.

17 (4) Administrative penalties assessed by the Director of Public Health shall be paid
18 to the Treasurer of the City and County of San Francisco and credited to the Public Health
19 Environmental Health Code Compliance Fund, authorized by Administrative Code Section 10.100-193.

20 ~~—(c) Any person who violates or refuses to comply with the provisions of this Article 19F shall be~~
21 ~~liable for a civil or administrative penalty in the amounts set forth in Cal. Labor Code Sec. 6404.5 for~~
22 ~~each day such violation is committed or permitted to continue. A civil penalty shall be assessed and~~
23 ~~recovered in a civil action brought in the name of the people of the City and County of San Francisco,~~
24 ~~by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a~~
25 ~~civil or administrative action brought pursuant to this Section shall be paid to the Treasurer of the City~~

1 ~~and County of San Francisco and credited to the Public Health Environmental Health Code~~
2 ~~Compliance Fund. An administrative penalty shall be assessed following an administrative hearing as~~
3 ~~described in subsection (b).~~

4
5 **SEC. 1009.26. COST RECOVERY.**

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

13 The hearing officer shall require in any order issued under this Section 1009.26 that the
14 responsible party pay to the City the costs of any inspection or monitoring deemed necessary
15 by the Hearing Officer because of the violation.

16
17 **SEC. 1009.29. AUTHORITY TO ADOPT RULES AND REGULATIONS; PUBLIC**
18 **INFORMATION CAMPAIGN.**

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

21 (b) Due to the addictive nature of nicotine, some tenants or owners of owner-occupied units
22 in multi-unit housing complexes may struggle to comply with Section 1009.22(f) of this Article 19F and
23 may need assistance and support. During the first year of the effective date of the ordinance in Board
24 File No. 201265 amending Section 1009.22(f) of this Article 19F, the Department of Public Health

1 shall initiate a multilingual and culturally responsive public information campaign to raise awareness
2 of the smoking prohibition and cessation resources.

3
4 **SEC. 1009.37. RELATIONSHIP TO OTHER SMOKING RESTRICTIONS.**

5 The provisions of this Article 19F are intended to supersede the smoking regulations
6 set forth in Articles 19A, 19B, 19C, ~~and 19E,~~ and 19M. The provisions of the foregoing Articles
7 ~~19A, 19B, 19C and 19E~~ are hereby suspended. Notwithstanding the above, if the provisions of
8 this Article 19F are determined invalid in whole or substantial part for any reason, the
9 provisions of the suspended Articles ~~19A, 19B, 19C and 19E~~ shall no longer be suspended and
10 shall become immediately operative. The suspended Articles ~~19A, 19B, 19C, and 19E~~ encompass
11 Sections 1006, 1006.1, 1006.2, 1006.3, 1006.4, 1006.5, 1007, 1007.1, 1007.2, 1007.3,
12 1007.4, 1007.5, 1008, 1008.1, 1008.2, 1008.3, 1008.4, 1008.5, 1008.6, 1008.7, 1008.8,
13 1009.5, 1009.6, 1009.7, 1009.8, 1009.9, ~~and~~ 1009.10, 19M.1, 19M.2, 19M.3, 19M.4, and 19M.5.
14 The Clerk of the Board shall cause to be printed appropriate notations in the Health Code
15 indicating that the provisions of Articles 19A, 19B, 19C, ~~and 19E,~~ and 19M are suspended,
16 unless and until such time that these provisions become operative again.

17
18 Section 3. Effective Date. This ordinance shall become effective 30 days after
19 enactment. Enactment occurs when the Mayor signs this ordinance, the Mayor returns this
20 ordinance unsigned or does not sign this ordinance within 10 days of receiving it, or the Board
21 of Supervisors overrides the Mayor's veto of this ordinance.

22
23 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
24 of this ordinance, or any application thereof, to any person or circumstance, is held to be
25 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision

1 shall not affect the validity of the remaining portions or applications of the ordinance. The
2 Board of Supervisors hereby declares that it would have passed this ordinance and each and
3 every section, subsection, sentence, clause, phrase, or word not declared invalid or
4 unconstitutional without regard to whether any other portion of this ordinance or application
5 thereof would be subsequently declared invalid or unconstitutional.

6
7 Section 5. Undertaking for the General Welfare. In enacting and implementing this
8 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
9 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
10 is liable in money damages to any person who claims that such breach proximately caused
11 injury.

12
13 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22
23 By: /s/ Valerie J. Lopez
24 VALERIE J. LOPEZ
25 Deputy City Attorney

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