

File No. 091443

Committee Item No. _____

Board Item No. 14

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 3/9/10

Cmte Board

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Completed by: Renee Craig

Date 3/4/10

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FILE NO. 091443

ORDINANCE NO.

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

2
3 Ordinance amending Articles 19F and 19I of the San Francisco Health Code by
4 amending Sections 1009.20-1009.23, 1009.25, and 1009.81, adding Sections 1009.26,
5 1009.27, and 1009.29-1009.32, and repealing Section 1009.24, to prohibit smoking in: 1)
6 business establishments and bars regardless of whether owner-operated, 2) common
7 areas of multi-unit housing complexes, 3) tourist lodging facilities, 4) tobacco shops, 5)
8 charity bingo games, 6) unenclosed dining areas of restaurants, 7) service waiting
9 areas, 8) areas outside entrances, exits and operable windows and vents of all
10 buildings except at the curb of the nearest street, sidewalk or alley, 9) farmers markets,
11 and 10) vehicles owned by the City and County of San Francisco; establishing
12 obligations for property owners and managers to prevent smoking in prohibited areas;
13 adding administrative procedures and penalties; repealing criminal penalties; adding
14 provisions for cost recovery and liens; and adding Administrative Code Section 10.100-
15 193 to establish a new Public Health Environmental Health Code Compliance Fund.

16 Note: Additions are single-underline italics Times New Roman;
17 deletions are ~~strikethrough-italics Times New Roman~~.
18 Board amendment additions are double underlined.
19 Board amendment deletions are ~~strikethrough-normal~~.

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

21 Section 1. The San Francisco Health Code is hereby amended by amending Sections
22 1009.20-1009.23, 1009.25, and 1009.81, adding Sections 1009.26, 1009.27, 1009.29-
23 1009.32, and repealing Section 1009.24, to read as follows:

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

1 **SEC. 1009.20. FINDINGS.**

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

4 (1) Smoking is the single greatest preventable cause of disease and death.

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

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

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

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

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

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

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

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

3 (10) ~~(2)~~ The children of parents who smoke compared with the children of
4 nonsmoking parents have an increased frequency of respiratory infections, increased
5 respiratory symptoms, and slightly smaller rates of increase in lung function as the lung
6 matures.

7 (11) ~~(3)~~ The simple separation of smokers and nonsmokers within the same air space
8 may reduce, but does not eliminate, the exposure of nonsmokers to environmental smoke. Eliminating
9 smoking in indoor spaces protects nonsmokers from exposure to secondhand smoke. Separating
10 smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of
11 nonsmokers to secondhand smoke.

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

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

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

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

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

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

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

12 (1) 15.6 percent of Latinos, 11.3 percent of Asians, 9.5 percent of African
13 Americans, and 10.4 percent of Whites were exposed to secondhand smoke in indoor workplaces within
14 two weeks of answering the survey.

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

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

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

23 (1) Nonsmokers have no adequate means to protect themselves from the
24 damage inflicted upon them by secondhand smoke when they involuntarily inhale tobacco smoke.
25

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

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

6
7 **SEC. 1009.21. DEFINITIONS.**

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

12 (a) "Bar" or "Tavern" means ~~an area any~~ business establishment facility primarily
13 ~~which is~~ devoted to the serving of alcoholic beverages for consumption by patrons on the
14 premises and in which the serving of food is only incidental to the consumption of such
15 beverages.

16 (b) "Business establishment" means any retail establishment, office, business,
17 store, factory, warehouse, storage facility or other place operated as a commercial venture.
18 The term includes any place where services are provided or goods are manufactured,
19 distributed, processed, assembled, sold or displayed for sale on a wholesale or retail basis.
20 The term also includes any place operated as part of the commercial venture, such as places
21 that provide accounting, management, personnel, information processing, accounting,
22 communication, financial and other support services that is owner operated, operated with
23 employees, or operated with volunteers.

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

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

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

18 (d) "Commercial building" means a building that contains only business establishments,
19 and no dwelling units.

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

21 (f)(e) "Dwelling Unit" means: (1) a dwelling space consisting of essentially complete
22 independent living facilities for one or more persons, including, for example, permanent provisions for
23 living and sleeping; (2) a room in group housing, even if such room lacks private cooking facilities and
24 private plumbing facilities, such as rooms in senior citizen housing, single room occupancy or
25

1 residential hotels, dorms, hostels, or shelters; or, (3) a housekeeping room as defined in the Housing
2 Code;

3 (g)(d) "Educational facility" means any school or education institution, whether
4 commercial or nonprofit, operated for the purpose of providing academic classroom
5 instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic,
6 musical or other cultural skills.

7 (h) "Enclosed" means: (1) any covered or partially covered space having more than 50
8 percent of its perimeter area walled in or otherwise closed to the outside such as a covered porch with
9 more than two walls, or (2) any space open to the sky ("uncovered") having more than 75 percent of
10 its perimeter area walled in or otherwise closed to the outside such as a courtyard. Outdoor patios
11 and Semi-enclosed smoking rooms shall not be considered enclosed.

12 (i) "Mixed-use building" means a building with commercial and dwelling units.

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

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

7 (l) "Outdoor Patio" means a side or rear outside area of a bar or tavern that has no
8 walls or ceiling and is open air. Outdoor dining areas of restaurants are not considered
9 outdoor patios when food is no longer served in the dining area, even if there is a bar located
10 outside.

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

13 (n)(m) "Residential building" means a building that contains only dwelling or housing units,
14 and no business establishments.

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

20 (p)(o) "Residential hotel unit" means any guest room, as defined in Chapter XII, Part II of the
21 San Francisco Housing Code, which had been occupied by a permanent resident on September 23,
22 1979, or any guest room designated as a residential unit pursuant to Chapter 41 of the San Francisco
23 Administrative Code.

1 ~~(g)(p)(g)~~ "Restaurant" means every ~~enclosed~~-restaurant, coffee shop, cafeteria, cafe,
2 luncheonette, sandwich stand, soda fountain, or other ~~enclosed~~-eating establishment serving
3 food to the general public, including outdoor and sidewalk dining areas. This term also includes
4 separate rooms within restaurants, either accessible from the restaurant or an outside door, and
5 whether or not the room is used as a meeting room or banquet room or food or beverages are served in
6 the room. This term also includes the areas adjacent to and serving the meeting or banquet room.

7 ~~(r)~~ "Semi-enclosed smoking room" means a room in a bar or tavern that: 1) has one
8 side open to the outside; 2) has a depth no more than two times the height of the room at the
9 opening to the outside; 3) has self-closing doors from the room to the rest of the
10 establishment; 4) is not a source of mechanical ventilation for the building; and 5) existed and
11 where smoking was allowed as of December 31, 2009 and has had no structural alterations
12 since that date except as approved by the Director under Section 1009.23(d).

13 ~~(s)(q)(h)~~ "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or
14 carrying any lighted smoking equipment for tobacco or any other weed or plant, except that this
15 Article shall not affect the policy making marijuana offenses the lowest law enforcement priority under
16 Chapter 12X of the Administrative Code nor affect any laws or regulations regarding medical
17 cannabis;

18 ~~(t)(+)(i)~~ "Sports arena" means sports stadiums, gymnasiums, health spas, boxing
19 arenas, swimming pools, roller and ice rinks, bowling alleys and similar places where the
20 public assembles either to engage in physical exercise, participate in athletic competition or
21 witness sports events.

22 ~~(u)(s)~~ "Tourist lodging facilities" means a retail use that provides tourist accommodations,
23 including guest rooms or suites, which are intended or designed to be used, rented, or hired out to
24 guests (transient visitors) intending to occupy the room for less than 32 consecutive days. This

1 definition includes, but is not limited to, buildings containing six or more guest rooms designated and
2 certified as tourist units under Chapter 41 of the San Francisco Administrative Code. For purposes of
3 this Article, "tourist lodging facilities" include, but are not limited to, motels that contain guest rooms
4 or suites which are independently accessible from the outside, with garage or parking space located on
5 the lot, and designed for, or occupied by, automobile-traveling transient visitors, hotels, motels, youth
6 hostels, bed and breakfast inns, and hotel and motel guest rooms. The term "tourist lodging facilities"
7 includes all lobbies, offices and internal passageway~~circulation~~ to guest rooms and suites within the
8 same enclosed building or buildings as the guest rooms or suites.

9 (v)(t) "Tobacco Shop" means any tobacco retailer whose principal or core business is selling
10 tobacco products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more
11 of floor area and display area is devoted to the sale or exchange of tobacco products, tobacco
12 paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of
13 tobacco products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions
14 include a tobacco product or tobacco paraphernalia. A "tobacco shop" cannot be located within or
15 adjacent to a restaurant, bar or tavern, either as a room accessible from the restaurant, bar or tavern
16 or from a separate entrance. In addition, a "tobacco shop" does not include an establishment where
17 customers use hookahs on the premises, either to smoke tobacco or any other weed or plant.

18
19 **SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES, CERTAIN**
20 **UNENCLOSED AREAS, AND ENCLOSED STRUCTURES CONTAINING CERTAIN USES**
21 **AND CERTAIN AREAS OF SPORTS STADIUMS.**

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

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

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

13 (3) Polling places;

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

17 (5) Educational facilities;

18 (6) Business establishments;

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

24 (8) Aquariums, galleries, libraries and museums;
25

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

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

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

6 (12) Convention facilities;

7 (13) Restaurants, except that smoking will be allowed in outdoor and sidewalk dining
8 areas of restaurants until sixth months after the effective date of this ordinance; subject to the
9 provisions of Section 1009.24.

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

12 (14) Bars and Taverns, except for semi-enclosed smoking rooms, the portion of an
13 outdoor patio at least ten feet away from the entry, exit or operable window of the bar or
14 tavern, or as specified in Sec. 1009.23(c) or 1009.23(d);

15 (15) Tourist Lodging Facilities;

16 (16) Homeless Shelters, including, but not limited to, the sleeping areas of those
17 buildings;

18 (17) Tobacco Shops, except as specified in Sec. 1009.23(e)(d);

19 (18) Facilities used to conduct charity bingo games pursuant to Penal Code Section
20 326.5, during such times that persons are assembled in the facility in connection with such games; and,

21 (19) Farmers Markets, whether on public or private property.

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

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

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

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

18 (e)(d) Notwithstanding Police Code section 121(d) or any other provision of law,
19 Smoking outside entrances, exits and operable windows and vents of all buildings is only permitted at
20 the curb of the nearest street, sidewalk or alley. If there is no curb within fifteen feet of the building,
21 smoking is prohibited within fifteen feet of entrances, exits, and operable windows and vents of any
22 building.

23 (f)(e) Smoking is prohibited in enclosed common areas of multi-unit housing complexes, as
24 defined in Section 1009.21(j), including, but not limited to, private apartment buildings, residential
25

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

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

12 (h)(d) It is unlawful for any person to smoke in any area where this Article prohibits
13 smoking. It is unlawful for the owner of any property, facility or establishment subject to this
14 Article or if a different person has the right to possession or management of such property,
15 facility or establishment, for that person to permit any person to smoke in any area where
16 smoking is prohibited by this Article, and the owner or manager had or should have had actual or
17 constructive knowledge acquired by due diligence of the smoking. This subsection does not require a
18 property owner or manager of a business to enforce a smoking prohibition outside the business
19 against persons who are not patrons of the business, or a property owner or manager of a multi-unit
20 housing complex to enforce a smoking prohibition outside the building against persons who are not
21 tenants of the building.

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

3 (1) Posted clear and prominent "no smoking" signs at each entrance to the
4 premises no higher than 8 feet and no lower than 5 feet, and within 10 feet of the door or the
5 most appropriate place for visibility from outside, that read "Smoking only is prohibited outside
6 this building except at the curb or at least 15 feet away from exits, entrances, and operable
7 windows-" in letters no less than one half inch in height and include These signs must be
8 written with letters of no less than one inch in height and include 1) the international "No
9 Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red
10 circle, with a diameter of at least six three inches, with a red bar across it, and 2) a statement at the
11 bottom of the sign that reads "SF that smoking is in violation of San Francisco Health Code
12 Article 19F" in font no less than 1/8 inch in height. Persons that own, manage, or operate
13 property that is LEED ("Leadership in Energy and Environmental Design") certified that has a
14 smoking distance requirement greater than that specified in this ordinance shall post signs
15 conforming to all the requirements in this Section that state that smoking only is allowed at
16 that greater distance from the exists, entrances, and operable windows.

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

20 (3) Requested, when appropriate, that such any person smoking in areas where
21 smoking is prohibited under this Article refrain from smoking. But this subsection does not require a
22 property owner or manager of a multi-unit housing complex of less than 16 units to make the
23 request that a person refrain from smoking unless the owner or manager observes the person
24 smoking in areas where smoking is prohibited under this Article, nor does this subsection
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1 require a property owner or manager of a business to enforce the smoking prohibition in Section
2 1009.22(d) outside a business by persons who are not patrons of the business, or a property owner or
3 manager of a multi-unit housing complex to enforce a smoking prohibition outside the building by
4 persons who are not tenants of the building.

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

19 (4)(3) Notify existing tenants of a multi-unit housing complex, within 90 days of the
20 effective date of this legislation, of the smoking prohibitions contained in this Article.

21 (5)(4) Remove any ashtrays from inside the premises. No persons, employer, business
22 or non profit entity shall knowingly or intentionally permit the presence or placement of ash
23 receptacles within an enclosed area where smoking is prohibited.

1 The duties described in Sections (1)-(5)(4) of this Section are baseline requirements and are not
2 the only responsibilities of owners or managers to prevent smoking in multi-unit housing complexes.

3 (j) Violation of any part of this Article is not grounds for eviction of residential tenants under
4 San Francisco Administrative Code Chapter 37, Sec. 37.9.

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

9 **SEC. 1009.23. EXCEPTIONS.**

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

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

14 (a) (b) Hotel and motel guest Tourist lodging facility room accommodations designated
15 as smoking rooms, provided that ~~hotels and motels~~ the owners or managers of tourist lodging
16 facilities shall designate at least 75 percent of the guest rooms in tourist lodging facilities as smoke
17 free. The owners or managers of tourist lodging facilities facility must permanently designate
18 particular guest rooms as smoke free and ashtrays and matches are to be permanently removed from
19 such smoke free rooms. Permanent "None smoking" signage shall be displayed affixed in smoke
20 free rooms. Where possible, designated smoke free rooms shall not be located on the same floor as
21 smoking rooms. It is recommended that smoking be relegated to the top floor with at least 50 percent
22 of the rooms on the top floor designated as smoke free. Owners and managers of tourist lodging
23 facillities may designate 100% of guest rooms as smoke free; if such 100% smoke free

1 designation is made, "no smoking" signage shall only be required in the common areas on
2 each floor of such tourist lodging facilities. 35 percent of the guest rooms as nonsmoking;

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

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

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

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

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

12 (c) Bars and Taverns located in commercial buildings that submit to the DirectorDepartment of
13 Public Health within three months of the effective date of this ordinance an application and all
14 documents required by the DirectorDepartment to demonstrate that the bar or tavern had no
15 employees as of December 31, 2009. If the DirectorDepartment of Public Health approves the
16 application under the criteria of this subsection, the bar or tavern may allow smoking on the
17 premises but must immediately 1) notify the Director if the establishment hires any employees,
18 and 2) submit all documents to the Director verifying eligibility for this exemption upon request
19 reapply for this exemption every subsequent year by January 31. The exemption will continue
20 for as long as the establishment has no employees and the building where the bar or tavern is
21 located continues to be commercial. Bars and Taverns located in mixed-use buildings that 1)
22 have no employees as of December 31, 2009, and 2) relocate to a commercial building within
23 two years of the effective date of this ordinance may allow smoking in their establishment after
24 relocation to a commercial building if they submit to the Director within three months of the

1 effective date of this ordinance an application and all documents required by the Director to
2 demonstrate that the bar or tavern had no employees as of December 31, 2009. The
3 application must also document that the bar or tavern will be located in a commercial building
4 within one year of the effective date of this ordinance. This exemption status immediately
5 expires if the establishment hires employees, or is no longer located in a commercial building.

6 (d) Bars and taverns located in commercial buildings that submit to the Director
7 within three months of the effective date of this ordinance an application and all documents
8 required by the Director to demonstrate that an area in the establishment is a semi-enclosed
9 smoking room and qualified as such as of December 31, 2009. If the Director denies the
10 application because the bar or tavern does not comply with the above requirements, the
11 Director may allow the establishments to make alterations to comply with this requirement; if
12 the bar or tavern completes the alterations to the Director's satisfaction, the Director may
13 approve the application. If the Director approves the application under the criteria of this
14 subsection, the bar or tavern may allow smoking in the semi-enclosed smoking room. This
15 exemption status is nontransferable and immediately expires if 1) there is a change in the
16 ownership interest(s) of the bar or tavern, 2) the room no longer meets the definition of semi-
17 enclosed smoking room, 3) there are structural alterations made to the smoking room after
18 December 31, 2009 not approved by the Director, or 4) the establishment is no longer located
19 in a commercial building. If the Director approves the application under the criteria of this
20 subsection, the bar or tavern may allow smoking in the semi-enclosed smoking room but must
21 immediately notify the Director of any changes that would disqualify the establishment from
22 this exemption. For purposes of this subsection, the term "change in ownership interest(s)"
23 means the aggregate change of 50 percent or more of the ownership of the business within a
24 12-month period.

1 ~~(e)~~(d) Tobacco Shops that are located in commercial buildings as of December 31, 2009. To
2 qualify for the exemption under this Section, the tobacco shop owner must submit an application and
3 all documents required by the DirectorDepartment of Public Health. If the Director approves the
4 applicationis approved by the Department, the tobacco shop may allow smoking on the premises.
5 The exemption will continue for as long as the establishment continues to qualify as a tobacco shop
6 and the building where the tobacco shop is located continues to be commercial. The tobacco
7 shop must immediately notify the Director of any change that would disqualify the retailer from
8 this exemption and submit all documents to the Director verifying eligibility upon request
9 reapply for this exemption every year by January 31.

10
11 ~~SEC. 1009.24. OPERATIVE DATE, INTERIM REGULATION, AND HARDSHIP EXEMPTION FOR~~
12 ~~RESTAURANTS.~~

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

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

21 ~~(c) On or after January 1, 1995, any owner or manager of a restaurant may apply to the~~
22 ~~Controller for an exemption from or modification of the requirements of this Article based on~~
23 ~~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.~~

5
6 **SEC. 1009.25. VIOLATIONS AND PENALTIES.**

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

22 (b) **Administrative Enforcement.** The Director also may enforce the provisions of this
23 Article by:

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

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

12 (i) Each day a violation is committed or permitted to continue shall constitute a
13 separate violation;

14 (ii) The Director of Public Health shall appoint the hearing officer to conduct
15 hearings for appeals;

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

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

23 (v) The penalty amounts for citations issued under Administrative Code Chapter
24 100 shall be the same as those set forth in subsection (c).
25

1 ~~(c)(b)~~ Any person who violates or refuses to comply with the provisions of this Article
2 shall be liable for a civil or administrative penalty in the amounts set forth in Cal. Labor Code Sec.
3 6404.5 for each day such violation is committed or permitted to continue, ~~which~~ A civil penalty
4 shall be assessed and recovered in a civil action brought in the name of the people of the City
5 and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any
6 penalty assessed and recovered in a civil or administrative action brought pursuant to this
7 Section shall be paid to the Treasurer of the City and County of San Francisco and credited to
8 the Department of Public Health Environmental Health Code Compliance Enforcement Fund. An
9 administrative penalty shall be assessed following an administrative hearing as described in subsection
10 (b).

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

15
16 **SEC. 1009.26. COST RECOVERY.**

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

24 The hearing officer shall require in any order issued under this Section that the responsible
25

1 party pay to the City the costs of any inspection or monitoring deemed necessary by the hearing officer
2 because of the violation.

3
4 **SEC. 1009.27. LIENS.**

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

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

14
15 **SEC. 1009.29. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

16 The Director may issue and amend rules, regulations, standards, guidelines, or conditions to
17 implement and enforce this Article.

18
19 **SEC. 1009.30. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL**
20 **WELFARE.**

21 In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to
22 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
23 obligation for breach of which it is liable in money damages to any person who claims that such breach
24 proximately caused injury.

1 **SEC. 1009.31. PREEMPTION.**

2 In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights
3 or authority of the State to do those things that are required, directed or expressly authorized by
4 federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to
5 prohibit that which is prohibited by federal or state law. It is the intent of the Board of Supervisors
6 that the provisions of this Article not be enforced in circumstances where duplicative state law
7 already regulates smoking. Rather it is the Board's intention that this Article be enforced as to
8 all business establishments to the fullest extent that state law does not regulate them.

9
10 **SEC. 1009. 33. SEVERABILITY.**

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

15
16 **ARTICLE 19I: PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS**
17 **AND FARMERS' MARKETS**

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 and
21 Park Commission or any other City department if the property is a park, square, garden, sport
22 or playing field, pier, or other property used for recreational purposes, or a farmers' market.

23 ~~(b) Nothing in this Section is intended to change the provisions of Health Code Section~~
24 ~~1009.22(b) regulating smoking in sport stadiums.~~

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

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

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

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

11 ~~(g)~~ *[Reserved.]*

12 Section 2. The San Francisco Administrative Code is hereby amended by adding
13 Section 10.100-193 to read as follows:

14
15 **SEC. 10.100-193. PUBLIC HEALTH ENVIRONMENTAL HEALTH CODE**

16 **COMPLIANCE FUND.**

17 (a) Establishment of Fund. The Public Health Environmental Health Code
18 Compliance Fund is established as a category eight fund to receive monies collected by the
19 Department of Public Health Occupational and Environmental Health Section through
20 enforcement and any other monies transferred into the fund.

21 (b) Use of Fund. The fund shall be used solely to support activities that achieve and
22 maintain compliance with provisions of the San Francisco Health Code and other laws
23 enforced by the Department of Public Health Occupational and Environmental Health Section,
24 including environmental investigations, administrative and civil enforcement actions.

1 remediation, and prevention targeted at adverse environmental health conditions in San
2 Francisco.

3 (c) Administration of Fund. Expenditures from the fund shall be made upon the
4 recommendation of the Director of the Department of Public Health or his or her designee.
5 Expenditures and encumbrances from this fund shall be subject to the budget and fiscal
6 provisions of the Charter.

7
8 APPROVED AS TO FORM:

9 DENNIS J. HERRERA, City Attorney

10
11 By:


12 Cecilia T. Mangoba
Deputy City Attorney

