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## ARTICLE 19:

### **SMOKING POLLUTION CONTROL**

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- Sec. 1000. Title.
- Sec. 1001. Purpose.
- Sec. 1002. Definitions.
- Sec. 1003. Regulation of Smoking in the Office Workplace.
- Sec. 1004. Where Smoking Not Regulated.
- Sec. 1005. Penalties and Enforcement.

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#### **SEC. 1000. TITLE.**

This Article shall be known as the Smoking Pollution Control Ordinance.

■ (Added by Proposition P, 11/8/83)

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#### **SEC. 1001. PURPOSE.**

Because the smoking of tobacco or any other weed or plant is a danger to health and is a cause of material annoyance and discomfort to those who are present in confined places, the Board of Supervisors hereby declares that the purposes of this Article are (1) to protect the public health and welfare by regulating smoking in the office workplace and (2) to minimize the toxic effects of smoking in the office workplace by requiring an employer to adopt a policy that will accommodate, insofar as possible, the preferences of nonsmokers and smokers and, if a satisfactory accommodation cannot be reached, to prohibit smoking in the office workplace.

This ordinance is not intended to create any right to smoke or to impair or alter an employer's prerogative to prohibit smoking in the workplace. Rather, if an employer allows employees to smoke in the workplace, then this ordinance requires (1) that the employer make accommodations for the preferences of both nonsmoking and smoking employees, and (2) if a satisfactory accommodation to all affected nonsmoking employees cannot be reached, that the employer prohibit smoking in the office workplace.

■ (Added by Proposition P, 11/8/83)

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#### **SEC. 1002. DEFINITIONS.**

For the purposes of this Article:

- (1) "City" means the City and County of San Francisco;
- (2) "Board of Supervisors" means the Board of Supervisors of the City and County of San Francisco;
- (3) "Person" means any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind;
- (4) "Employer" means any person who employs the services of an individual person;
- (5) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit;
- (6) "Office Workplace" means any enclosed area of a structure or portion thereof intended for occupancy by business entities which will provide primarily clerical, professional or business services of the business entity, or which will provide primarily clerical, professional or business services to other business entities or to the public, at that location. Office workplace includes, but is not limited to, office spaces in office buildings, medical office waiting rooms, libraries, museums, hospitals and nursing homes;
- (7) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant; and
- (8) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress and is not intended to mean areas commonly described as public lobbies.

■ (Added by Proposition P, 11/8/83)

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#### **SEC. 1003. REGULATION OF SMOKING IN THE OFFICE WORKPLACE.**

- (1) Each employer who operates an office or offices in the city shall within three months of adoption of this ordinance, adopt, implement and maintain a written Smoking Policy which shall contain, at a minimum, the following provisions and requirements:

(a) Any nonsmoking employee may object to his or her employer about smoke in his or her workplace. Using already available means of ventilation or separation or partition of office space, the employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of nonsmoking and smoking employees. However, an employer is not required by this ordinance to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees.

(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached in any given office workplace, the preferences of nonsmoking employees shall prevail and the employer shall prohibit smoking in that office workplace. Where the employer prohibits smoking in an office workplace, the area in which smoking is prohibited shall be clearly marked with signs.

(2) The Smoking Policy shall be announced within three weeks of adoption to all employees working in office workplaces in the city and posted conspicuously in all workplaces under the employer's jurisdiction.

■ (Added by Proposition P, 11/8/83)

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## **SEC. 1004. WHERE SMOKING NOT REGULATED.**

This Article is not intended to regulate smoking in the following places and under the following conditions within the city:

- (1) A private home which may serve as an office workplace;
- (2) Any property owned or leased by state or federal government entities;
- (3) Any office space leased or rented by a sole independent contractor;
- (4) A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the Fire Marshal or by other law, ordinance or regulation.

■ (Added by Proposition P, 11/8/83)

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## **SEC. 1005. PENALTIES AND ENFORCEMENT.**

- (1) The Director of Public Health shall enforce Section 1003 hereof against violations by either of the following actions:
  - (a) Serving notice requiring the correction of any violation of this Article.
  - (b) Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this Article, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation;
- (2) Any employer who violates Section 1003 hereof may be liable for a civil penalty, not to exceed \$500, which penalty shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.
- (3) In undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added by Proposition P, 11/8/83)

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## **ARTICLE 19A:**

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### **REGULATING SMOKING IN EATING ESTABLISHMENTS [SUSPENDED]**

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- Sec. 1006. Purpose.
- Sec. 1006.1. Definitions.
- Sec. 1006.2. Regulation of Smoking in Eating Establishments.
- Sec. 1006.3. Disclaimers.
- Sec. 1006.4. Penalties and Enforcement.
- Sec. 1006.5. Severability.

**Editor's Note:**

*The provisions of this Article are suspended and superseded by Article 19F. See Article 19F, Section 1009.37.*

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## **SEC. 1006. PURPOSE.**

The Board of Supervisors has a longstanding interest in the risks to human health of tobacco use, and disease prevention and health promotion are essential components of this health policy. Cigarette smoking is a certifiable health danger to smokers and nonsmokers alike. By smoking cigarettes, or being exposed to secondhand smoke, people inhale various chemicals including, for example, formaldehyde, ammonia, tar, nicotine, and carbon monoxide. The Surgeon General of the United States has declared that cigarette smoking causes lung cancer, heart disease, and emphysema, and that smoking by pregnant women may result in fetal injury, premature birth, and low birth weight. The Board of Supervisors desires to prevent disease and promote the health of the people of San Francisco by making it easier for residents and visitors to avoid secondhand smoke in eating establishments. For the most part, this Article simply extends the smoking prohibitions of Article 19 to include eating establishments.

■ (Added by Ord. 244-87, App. 7/1/87)

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## **SEC. 1006.1. DEFINITIONS.**

Unless the term is specifically defined in this Article or the contrary stated or clearly appears from the context, the definitions set forth in Article 19, Section 1002 of this Code, shall govern the interpretation of this Article.

(a) "Eating establishment" shall mean every enclosed restaurant, coffee shop, cafeteria, cafe, luncheonette, sandwich stand, soda fountain, or other enclosed eating establishment serving food to the general public. The term "eating establishment" shall not include banquet rooms in use for private social functions. The term "eating establishment" shall not apply to any property owned or leased by State or federal government agencies.

■ (Added by Ord. 244-87, App. 7/1/87)

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## **SEC. 1006.2. REGULATION OF SMOKING IN EATING ESTABLISHMENTS.**

In eating establishments smoking shall be prohibited in lobbies, waiting areas, restrooms, and dining areas designated for nonsmoking. Unless the eating establishment has been designated entirely nonsmoking, the owner, manager or operator of an eating establishment shall allocate and designate by appropriate signage an adequate amount of space in these areas to meet the demands of both smokers and nonsmokers, and shall inform all patrons that nonsmoking areas are provided.

■ (Added by Ord. 244-87, App. 7/1/87)

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## **SEC. 1006.3. DISCLAIMERS.**

(a) By regulating smoking in eating establishments, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach approximately caused injury.

(b) No owner of an eating establishment shall be required to construct or erect walls, partitions or other barriers to comply with this ordinance.

■ (Added by Ord. 244-87, App. 7/1/87)

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## **SEC. 1006.4. PENALTIES AND ENFORCEMENT.**

The provisions of Section 1005 of Article 19 are applicable to the enforcement of violations of this Article. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.

■ (Added by Ord. 244-87, App. 7/1/87)

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## **SEC. 1006.5. SEVERABILITY.**

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

(Added by Ord. 244-87, App. 7/1/87)

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## **ARTICLE 19B:**

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## **REGULATING SMOKING IN SHARED OFFICE WORKPLACE [SUSPENDED]**

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- Sec. 1007. Findings.
- Sec. 1007.1. Definitions.
- Sec. 1007.2. Regulation of Smoking in Shared Office Workplace.
- Sec. 1007.3. Disclaimers.
- Sec. 1007.4. Penalties and Enforcement.
- Sec. 1007.5. Severability.

**Editor's Note:**

*The provisions of this Article are suspended and superseded by Article 19F. See Article 19F, Section 1009.37.*

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## **SEC. 1007. FINDINGS.**

The question of whether tobacco smoke is harmful to smokers was answered more than 20 years ago. U.S. Public Health Service reports on the health consequences of smoking have conclusively established cigarette smoking as the largest single preventable cause of premature death and disability in the United States. As a result many scientists began to question whether the low levels of exposure to environmental tobacco smoke (ETS) received by nonsmokers could be harmful.

The 1986 Surgeon General's Report on the Health Consequences of Involuntary Smoking clearly documents that nonsmokers are placed at increased risk for developing disease as the result of ETS exposure. The term "involuntary smoking" denotes that for many nonsmokers, exposure to ETS is the result of an unavoidable consequence of being in close proximity to smokers.

The report contains the following conclusions: (1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers. (2) Simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, exposure of nonsmokers to environmental tobacco smoke.

The quality of the indoor environment must be a concern of all who control and occupy that environment. Protection of individuals from exposure to environmental tobacco smoke is therefore a responsibility shared by all. As employers and employees we must ensure that the act of smoking does not expose the nonsmoker to tobacco smoke. For smokers, it is their responsibility to assure that their behavior does not jeopardize the health of others. For nonsmokers, it is their responsibility to provide a supportive environment for smokers who are attempting to stop.

The scientific case against involuntary smoking as a health risk is more than sufficient to justify this legislative measure, the goal of which must be to protect the nonsmoker from environmental tobacco smoke.

■ (Added by Ord. 180-88, App. 4/28/88)

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## **SEC. 1007.1. DEFINITIONS.**

Unless otherwise defined herein, the definitions set forth in Article 19, Section 1002, of this Code, shall govern the interpretation of this Article.

(a) "Office workplace" shall include, in addition to the examples noted in Section 1002(6), press boxes at stadiums or other locations.

■ (Added by Ord. 180-88, App. 4/28/88)

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## **SEC. 1007.2. REGULATION OF SMOKING IN SHARED OFFICE WORKPLACE.**

The provisions of this Article apply to office workplace shared by the employees of two or more employers.

(1) Each employer shall notify his or her employees of the following regulations regarding smoking:

(a) Any nonsmoking employee may object to his or her employer about smoke in the office workplace. If the objection concerns another employer's employee, the nonsmoker's employer shall notify the smoker's employer of the objection. Using already available means of ventilation or separation or partition of office space, the smoker's employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of the nonsmoking and smoking employees. However, an employer is not required by this ordinance to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees.

(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached, the preferences of nonsmoking employees shall prevail and the employers shall prohibit smoking in that office workplace. The employers shall clearly mark the area in which smoking is prohibited.

■ (Added by Ord. 180- 88, App. 4/28/88)

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## **SEC. 1007.3. DISCLAIMERS.**

By regulating smoking in shared office workplace, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach approximately caused injury.

■ (Added by Ord. 180-88, App. 4/28/88)

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## **SEC. 1007.4. PENALTIES AND ENFORCEMENT.**

The provisions of Section 1005 of Article 19 are applicable to the enforcement of violations of this Article. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.

■ (Added by Ord. 180-88, App. 4/28/88)

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## **SEC. 1007.5. SEVERABILITY.**

If any provisions of this Article, or the application of any such provisions to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons at circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

(Added by Ord. 180-88, App. 4/28/88)

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# **ARTICLE 19C:**

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## **REGULATING SMOKING IN PUBLIC PLACES AND IN HEALTH, EDUCATIONAL AND CHILD CARE FACILITIES [SUSPENDED]**

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- Sec. 1008. Findings.
- Sec. 1008.1. Definitions.
- Sec. 1008.2. Regulation of Smoking in Public Places and Designated Facilities.
- Sec. 1008.3. Regulation of Smoking in Places of Entertainment, Sports Arenas, Convention Facilities, and Hotel Lobbies.
- Sec. 1008.4. Application and Exceptions.
- Sec. 1008.5. Posting of Signs.
- Sec. 1008.6. Unlawful to Permit Smoking in or to Smoke in Prohibited Areas.
- Sec. 1008.7. Penalties and Enforcement.
- Sec. 1008.8. Severability.

**Editor's Note:**

*The provisions of this Article are suspended and superseded by Article 19F. See Article 19F, Section 1009.37.*

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## **SEC. 1008. FINDINGS.**

- (a) The United States Surgeon General's 1986 Report on the Health Consequences of Involuntary Smoking reports the following:
  - (1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.
  - (2) The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.
  - (3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.
- (b) The Board of Supervisors finds and declares:
  - (1) Nonsmokers have no adequate means to protect themselves from the damage inflicted upon them when they involuntarily inhale tobacco smoke.
  - (2) Regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort, and environment of nonsmokers.
  - (c) It is, therefore, the intent of the Board of Supervisors, in enacting this Article, to protect the nonsmoker from environmental tobacco smoke and to eliminate smoking, as much as possible, in public places.

(Added by Ord. 300-88, App. 6/30/88)

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## **SEC. 1008.1. DEFINITIONS.**

Unless the term is specifically defined in this Article or the contrary stated or clearly appears from the context, the definitions set forth in Article 19, Section 1002, of this Code (the Smoking Pollution Control Ordinance) shall govern the interpretation of this Article. The definitions set forth in this Article shall be construed so as to make the prohibition against smoking set forth herein broadly applicable.

- (a) "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.
- (b) "Child care facility" means a facility in which a person, at the request and consent of a parent or legal guardian, provides care during a part of any 24-hour period for compensation, whether or not such person is licensed.
- (c) "Educational facility" means any school or educational institution, whether commercial or nonprofit, operated for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills.
- (d) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress. It includes areas commonly described as public lobbies or lobbies when they are in an area that is enclosed as defined herein.
- (e) "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.
- (f) "Nonprofit establishment" means any office, store, or other place operated by any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from the operation of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a nonprofit entity.
- (g) "Person" means a natural person or any legal entity, including but not limited to a corporation, firm, partnership or trust.
- (h) "Public area" means any enclosed area of a building to which members of the general public have access. It shall include, by way of example only, lobbies of businesses open to the public; reception areas of businesses open to the public; department stores; one-room businesses where the room is open to the public; restrooms open to the public; stairways, hallways, escalators and elevators in buildings open to the public; and other enclosed areas open to the public as set forth herein.
- (i) "Business establishment" means any business, store, office or other place where goods or services are sold or provided as part of a commercial venture. It includes but is not limited to the following: (1) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale; (2) grocery, pharmacy, specialty, department and other stores which sell goods or merchandise; (3) service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products; (4) barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public; (5) video arcade, poolhall, and other amusement centers; (6) offices providing professional services such as legal, medical, dental, engineering, and architectural services; (7) banks, savings and loan offices, and other financial establishments; (8) hotels and motels, and other places that provide accommodations to the public.
- (j) "Retail tobacco store" shall mean a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (k) "Sports arena" means sports stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and similar places where the public assembles either to engage in physical exercise, participate in athletic competition or witness sports events.

■ (Added by Ord. 300-88, App. 6/30/88)

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## **SEC. 1008.2. REGULATION OF SMOKING IN PUBLIC PLACES AND DESIGNATED FACILITIES.**

Smoking shall be prohibited in those enclosed areas of the following places during those times when the general public has access to them; notwithstanding any other provision of this Article, smoking is permitted in the public areas of the following places without violating this Article if one or more designated smoking areas are established which are physically separated by walls or partitions so that smoke does not permeate into areas where smoking is prohibited and so long as such designated smoking areas do not exceed in aggregate size the area or areas devoted to non-smoking which are for the general public.

- (a) Public areas of every building or portion thereof on property owned or leased by the City and County of San Francisco; within 90 days after the effective date of this ordinance, every commission, department or agency with jurisdiction over such property shall adopt regulations or policies implementing the provisions of this Article;
- (b) Public areas of hearing rooms, courtrooms, or places of public assembly located in buildings in which the business of any governmental body or agency is conducted;
- (c) Polling places;
- (d) (1) Public areas of health facilities, including but not limited to hospitals, long term care facilities, clinics, physical therapy facilities, and doctors' and dentists' offices, which public areas shall include waiting rooms and lobbies;

(2) The following private areas of hospitals, long term care facilities, clinics, physical therapy facilities, doctors' and dentists' offices, and other health facilities, even though the general public may not have access to such areas: wards, inpatient rooms, and outpatient examination and treatment rooms;

(3) Health Facility Exemptions. Notwithstanding any other provision of this Article, smoking is permitted in (i) wards and inpatient rooms if all patients currently in the ward or room request in writing to be placed in a room where smoking is permitted; and (ii) in designated areas in waiting rooms and lobbies of health facilities which may be established and which are physically separated by walls or partitions so that smoke does not permeate into areas where smoking is prohibited so long as such designated smoking areas do not exceed in aggregate size the areas in the lobbies and waiting rooms which are for the general public and designated as non-smoking; and (iii) in publicly owned long term care facilities, provided that such facilities shall adopt within 90 days of the effective date of this ordinance a written plan designed to meet the needs of patients, family and staff for a smoke-free environment;

(e) Public areas in educational facilities;

(f) Classrooms, meeting or conference rooms, and lecture halls in educational facilities; this prohibition is intended to apply even when such areas are open only to persons enrolled or otherwise formally authorized to attend;

(g) Public areas in business establishments and nonprofit establishments; provided, however, that not included are any establishments which employ three or fewer employees;

(h) Public areas of privately owned aquariums, galleries, libraries and museums when open to the public;

(i) Enclosed areas in child care facilities when children are present; provided, however, that not included are child care facilities which employ three or fewer employees. This prohibition is intended to apply even when such areas are open only to those being cared for in such facilities;

(j) Notwithstanding the provision of subsection (g) above that exempts establishments which employ three or fewer employees, all areas of all automatic laundries or launderettes intended for use by members of the general public.

Notwithstanding any other provision of this Article, any owner, operator, manager, or other person who controls any establishment or facility described in this Article may declare the entire establishment or facility as non-smoking.

■ (Added by Ord. 300-88, App. 6/30/88; amended by Ord. 16-90, App. 1/10/90)

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### **SEC. 1008.3. REGULATION OF SMOKING IN PLACES OF ENTERTAINMENT, SPORTS ARENAS, CONVENTION FACILITIES, AND HOTEL LOBBIES.**

The owner of the following premises, or the person who has the right to possession and management of the premises, shall designate smoking and non-smoking areas in enclosed areas of the following places and shall enforce the smoking prohibition in the non-smoking areas during those times when the general public has access to the premises. The owner or person with the right to possession and management shall post the signs required by Section 1008.5. An enclosed area may be divided into smoking and non-smoking areas without a physical separation between them. The posted signs shall clearly designate where the demarcation is between the smoking and non-smoking areas. Designated smoking areas shall not exceed in aggregate size the areas which are for the general public and which must be devoted to non-smoking.

(a) Public areas of any building primarily used for exhibiting motion pictures, drama, dance, musical performance or other entertainment, and within any room, hall or auditorium that is occasionally used for exhibiting motion pictures, drama, dance, musical performance, lecture or other entertainment during the time that said room, hall or auditorium is open to the public for such exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production;

(b) Public areas of buildings containing sports arenas;

(c) Public areas of convention facilities;

(d) Hotel lobbies.

■ (Added by Ord. 300-88, App. 6/30/88)

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### **SEC. 1008.4. APPLICATION AND EXCEPTIONS.**

(a) The following shall not be subject to this Article:

(1) "Eating establishments" regulated by Article 19A of this Code;

(2) Bars; provided, however, that not excluded from the requirements of this Article are areas commonly known as lobbies located in hotels, convention centers, theaters, and similar establishments;

(3) Rooms rented to guests in hotels, motels and similar establishments where not designated by the proprietor of said facilities as non-smoking;

(4) Retail tobacco stores;

(5) Discotheques, dance halls, or other establishments which are primarily devoted to entertaining people by providing music and dancing.

(b) Article 19 of this Code regulates smoking in the office workplace. In those times and places where the provisions of this Article apply, they shall govern. In all other instances, the provisions of Article 19 shall apply. Notwithstanding any other provision of this Article, no employee shall be entitled to smoke in an office workplace unless the provisions of Article 19 are complied with.

■ (Added by Ord. 300-88, App. 6/30/88)

## **SEC. 1008.5. POSTING OF SIGNS.**

(a) "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted in every enclosed area where smoking is prohibited by this Article by the owner of such building or, if a different person has the right to possession and management of the property, by the person with such right.

(b) The owner and the manager or operator of every theater and auditorium shall be responsible for conspicuously posting signs in the lobby stating that smoking is prohibited within the theater or auditorium and the lobby, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.

(c) "Smoking" signs may be posted where permitted by this Article.

■ (Added by Ord. 300-88, App. 6/30/88)

## **SEC. 1008.6. UNLAWFUL TO PERMIT SMOKING IN OR TO SMOKE IN PROHIBITED AREAS.**

(a) It shall be unlawful for the owner of any property or establishment subject to this Article, or, if a different person has the right to possession and management of such property or establishment, for that person, to fail to post or to maintain the signs required by this Article or to permit any person to smoke in any area where smoking is prohibited by this Article. The person responsible for enforcing the prohibition against smoking in designated areas shall be deemed to have complied with these Sections if he or she posts the signs required by this Article and, upon notice of a violation, promptly makes a good faith effort to notify the violator that smoking is illegal and requests the violator not to smoke, either personally or through a designee.

(b) It is unlawful for any person to smoke in an area where signs have been posted indicating that smoking is prohibited or to smoke in an area where this Article prohibits smoking.

■ (Added by Ord. 300-88, App. 6/30/88)

## **SEC. 1008.7. PENALTIES AND ENFORCEMENT.**

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

(b) Any person that violates or refuses to comply with the provisions of this Article shall be liable for a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco.

(c) Any person who violates or refuses to comply with the provisions of this Article shall be guilty of an infraction, and shall be deemed guilty of a separate offense for every day such violation or refusal shall continue. Every violation is punishable by (1) a fine not exceeding \$100 for a first violation; (2) a fine not exceeding \$200 for a second violation within one year; (3) a fine not exceeding \$500 for each additional violation within one year.

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

■ (Added by Ord. 300-88, App. 6/30/88)

## **SEC. 1008.8. SEVERABILITY.**

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than

those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

(Added by Ord. 300-88, App. 6/30/88)

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## ARTICLE 19D:

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### **PROHIBITING CIGARETTE VENDING MACHINES**

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- Sec. 1009. Definitions.
- Sec. 1009.1. Prohibition of Cigarette Vending Machines.
- Sec. 1009.2. Disclaimers.
- Sec. 1009.3. Penalties and Enforcement.
- Sec. 1009.4. Severability.

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#### **SEC. 1009. DEFINITIONS.**

Unless the term is specifically defined in this Article or the contrary stated or clearly appears from the context, the definitions set forth in Article 19, Section 1002 of this Code shall govern the interpretation of this Article.

- (a) "Cigarette vending machine" shall mean any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.
- (b) "Tobacco product" shall mean any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe, tobacco, snuff, chewing tobacco, and dipping tobacco.
- (c) "Tobacco accessories" shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.

(d) A "six-month owner" shall mean a person who purchased a cigarette vending machine fewer than six months prior to the effective date of this Amendment for the purpose of using the vending machine to sell or distribute tobacco products exclusively within the City and County of San Francisco and who on the effective date of this Amendment was using the vending machine in a place inaccessible to minors and who has not, or will not have, recovered his, her or its investment therein by the date on which discontinuance of use is required pursuant to Section 1009.1(b).

■ (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

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#### **SEC. 1009.1. PROHIBITION OF CIGARETTE VENDING MACHINES.**

(a) No person shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of any cigarette vending machine used or intended to be used for the purpose of selling or distributing any tobacco products or tobacco accessories therefrom.

(b) Any cigarette vending machine in use on the effective date of this Amendment on premises to which access by minors is prohibited by law shall be removed within 90 days after the effective date of this Amendment.

(c) A six-month owner may apply to the Director of Public Health for a use extension based on financial hardship. A use extension shall be granted to a six-month owner if the Director of Public Health, or the Director's designee appointed to consider the application, makes all of the following findings:

- (1) That the cigarette vending machine was intended for use only within the corporate limits of the City and County of San Francisco and had been in use on premises inaccessible to minors on the effective date of this Amendment;
- (2) That the vending machine owner had owned the machine for less than six months prior to the effective date of this Amendment;
- (3) That the vending machine owner has not, or will not have recovered his, her or its investment therein before the date of required discontinuance;
- (4) That the vending machine owner has no practical way to recover the investment in the machine other than its continued use within the corporate limits of the City and County of San Francisco on premises inaccessible to minors;
- (5) That the investment not yet recovered exceeds 10 percent of the actual cost of the machine; and
- (6) That the vending machine will be placed in a location on the premises easily viewed and supervised by the owner or a responsible employee.

The length of the use extension shall not exceed that additional time period necessary to allow recovery of the owner's investment;

provided, however, that no use extension shall be granted which allows the total time during which the machine will be in use within the corporate limits of the City and County of San Francisco on premises inaccessible to minors to exceed one year from the date of installation of the machine. The cigarette vending machine owner shall bear the burden of proof on each issue. The decision of the Director of Public Health, or the Director's designee, shall be final. The Director's power to grant a use extension shall expire six months after the effective date of this Amendment.

■ (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

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## SEC. 1009.2. DISCLAIMERS.

By prohibiting cigarette vending machines, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

■ (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

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## SEC. 1009.3. PENALTIES AND ENFORCEMENT.

(a) The Director of Public Health shall enforce Section 1009.1 hereof against violations by any of the following actions:

- (1) Receiving complaints relating to violations of this Article;
- (2) Acting upon complaints relating to violations of this Article by either:

(A) Serving notice requiring correction of any violation of this Article;

(B) Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this Article, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation.

(b) Any person who violates or refuses to comply with the provisions of this Article shall be liable for a civil penalty of \$100, which penalty shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.

(c) Any person who violates or refuses to comply with the provisions of this Article 19D shall be guilty of a misdemeanor, and shall be deemed guilty of a separate offense for every day such violation or refusal shall continue. Every violation is punishable by (1) a fine of at least \$25 but not exceeding \$100 for a first violation; (2) a fine of at least \$100 but not exceeding \$200 for a second violation within one year; (3) a fine of at least \$200 but not exceeding \$500 for each additional violation within one year, and by the imposition of administrative penalties in the amounts set forth in Article<sup>1</sup> 19H.20 of the Health Code.

(Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97; Ord. [140-25](#), File No. 250606, App. 8/1/2025, Eff. 9/1/2025)

CODIFICATION NOTE

■ 1. So in Ord. [140-25](#).

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## SEC. 1009.4. SEVERABILITY.

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

(Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

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## ARTICLE 19E:

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### PROHIBITING SMOKING IN PLACES OF EMPLOYMENT AND CERTAIN SPORTS ARENAS [SUSPENDED]

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- Sec. 1009.5. Prohibition of Smoking in Places of Employment and Sports Arenas.
- Sec. 1009.6. Hardship Exemption for Restaurants.
- Sec. 1009.7. Violations and Penalties.
- Sec. 1009.8. Disclaimers.
- Sec. 1009.9. Severability.
- Sec. 1009.10. Operative Date.

**Editor's Note:**

*The provisions of this Article are suspended and superseded by Article 19F. See Article 19F, Section 1009.37.*

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## **SEC. 1009.5. PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT AND SPORTS ARENAS.**

- (a) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.
- (b) No owner, manager, or operator of a sports arena or stadium shall knowingly or intentionally permit, and no person on the premises shall engage in, the smoking of tobacco products in any enclosed or open space at a sports arena or stadium except in (1) concourses and ramps outside seating areas, (2) private suites and corridors to private suites, and (3) areas designated for parking. Any portion of a sports arena or stadium used as a bar or restaurant shall be subject to the provisions of this Article governing bars and restaurants as "places of employment." For purposes of this Section a sports arena or stadium means a publicly owned facility which has a seating capacity of at least 30,000 people.
- (c) For purposes of this Section:
- (1) Except as otherwise provided in this Section, the terms "employer" and "employee" shall have the same meaning as the construction given those terms in Labor Code Sections 6304 and 6304.1.
- (2) "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on. "Place of employment" shall not include:
- (A) That portion of any hotel or motel lobby designated for smoking, provided that no hotel or motel shall designate more than 25 percent of any lobby for smoking, and provided further that no hotel or motel shall permit smoking in any room used for exhibit space;
- (B) Hotel and motel guest room accommodations designated as smoking rooms, provided that hotels and motels shall designate at least 35 percent of the guest rooms as nonsmoking;
- (C) Facilities used to conduct charity bingo games pursuant to Penal Code Section 326.5 during such times that persons are assembled in the facility in connection with such games;
- (D) Banquet rooms in use for private social functions;
- (E) Bars. A "bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. If a restaurant contains a bar, that portion that constitutes the bar shall not be considered a place of employment under this ordinance;
- (F) Private homes;
- (G) Any store that engages exclusively in the sale of tobacco and tobacco related products and any portion of any store devoted exclusively to the sale of tobacco and tobacco related products.
- (d) For purposes of this Section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:
- (1) Posted clear and prominent "No Smoking" signs at each entrance to the workplace premises;
- (2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.
- For purposes of this subsection, "reasonable steps" shall not include the physical ejection of a nonemployee from the place of employment.
- (e) For purposes of this Section, the owner, manager, or operator of a sports arena has not acted knowingly or intentionally if he or she has taken the reasonable steps described in Subsection (d) to prevent smoking by a person on the premises who is not an employee of the owner, manager or operator.
- (f) Insofar as this Article applies to actions or omissions involving smoking that are also governed by any other ordinance of the City and County of San Francisco, the provisions of this Article are intended to supersede any other provision; provided, however, that the provisions of this Article supersede such other provision only after the provisions of this Article that apply to such act or omission become operative. The intent of this Section is that the current ordinances regulating smoking continue to be enforced until the applicable provisions of this Article become operative.

■ (Added by Ord. 359-93, App. 11/18/93)

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## **SEC. 1009.6. HARDSHIP EXEMPTION FOR RESTAURANTS.**

- (a) Any owner or manager of a restaurant may apply to the Controller for an exemption from or modification of the requirements of this Article based on significant financial hardship caused by compliance with this Article. The applicant shall include all information

required by the Controller. An application for exemption or modification shall be accompanied by a reasonable fee established by the Controller to cover the costs required to process the application and make a determination. The Controller shall give the Department of Public Health an opportunity to present relevant information with respect to each application.

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

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

(d) No exemptions or modifications shall be granted to any restaurant which has not been smokefree for a period of less than six months. Notwithstanding any other provision of this Article, any restaurant which has been granted an exemption or modification from the requirements of this Article shall not permit smoking in more than 25 percent of the seating or floor space of the restaurant.

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

■ (Added by Ord. 359-93, App. 11/18/93)

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## SEC. 1009.7. VIOLATIONS AND PENALTIES.

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

(b) Any person who violates or refuses to comply with the provisions of this Article, shall be liable for a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco.

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

■ (Added by Ord. 359-93, App. 11/18/93)

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## SEC. 1009.8. DISCLAIMERS.

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

■ (Added by Ord. 359-93, App. 11/18/93)

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## SEC. 1009.9. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision of application, and to this end the provisions of this Act are severable.

■ (Added by Ord. 359-93, App. 11/18/93)

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## SEC. 1009.10. OPERATIVE DATE.

The provisions of this Article shall not be operative until February 1, 1994; provided, however, that with respect to restaurants, the provisions of this Article shall not be operative until January 1, 1995.

## **ARTICLE 19F:**

### **PROHIBITING SMOKING IN ENCLOSED AREAS, CERTAIN UNENCLOSED AREAS, AND SPORTS STADIUMS**

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- Sec. 1009.20. Findings.
  - Sec. 1009.21. Definitions.
  - Sec. 1009.22. Prohibiting Smoking in Buildings, Certain Vehicles, Certain Unenclosed Areas, Enclosed Structures Containing Certain Uses, and Sports Stadiums.
  - Sec. 1009.23. Exceptions.
  - Sec. 1009.25. Violations and Penalties.
  - Sec. 1009.26. Cost Recovery.
  - Sec. 1009.27. Liens.
  - Sec. 1009.29. Authority to Adopt Rules and Regulations.
  - Sec. 1009.30. City Undertaking Limited to Promotion of the General Welfare.
  - Sec. 1009.31. Preemption.
  - Sec. 1009.33. Severability.
  - Sec. 1009.35. Disclaimers.
  - Sec. 1009.37. Relationship to Other Smoking Restrictions.
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#### **SEC. 1009.20. FINDINGS.**

- (a) The United States Surgeon General's 2006 Report on the Health Consequences of Involuntary Smoking reports the following:
  - (1) Smoking is the single greatest preventable cause of disease and death.
  - (2) Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic (cancer causing), including formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide.
  - (3) Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.
  - (4) Concentrations of many cancer-causing and toxic chemicals are higher in secondhand smoke than in the smoke inhaled by smokers.
  - (5) Breathing secondhand smoke for even a short time can have immediate adverse effects on the cardiovascular system and interferes with the normal functioning of the heart, blood, and vascular systems in ways that increase the risk of a heart attack.
  - (6) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.
  - (7) Short exposures to secondhand smoke can cause blood platelets to become stickier, damage the lining of blood vessels, decrease coronary flow velocity reserves, and reduce heart rate variability, potentially increasing the risk of a heart attack.
  - (8) Secondhand smoke contains many chemicals that can quickly irritate and damage the lining of the airways. Even brief exposure can result in upper airway changes in healthy persons and can lead to increased and more frequent asthma attacks in children who already have asthma.
  - (9) Secondhand smoke is a cause of disease, including lung cancer, in healthy nonsmokers.
  - (10) The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.
  - (11) Eliminating smoking in indoor spaces protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.
- (b) The California Air Resources Board issued a report in January 2006 that identified secondhand smoke as a toxic air contaminant with no safe level of exposure. Secondhand smoke has joined benzene, arsenic, and diesel exhaust on the Toxic Air Contaminant list. According to the report:
  - (1) Each year in California, secondhand smoke is linked to: (A) 400 additional lung cancer deaths a year in nonsmokers; (B) 3,600 deadly heart attacks; and, (C) 31,000 asthma attacks in children.
  - (2) Health effects causally associated with exposure to secondhand smoke include (A) breast cancer in younger, primarily

premenopausal women; (B) asthma induction and exacerbation in children and adults; (C) pre-term delivery; and (D) altered vascular properties associated with risk for heart attack.

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

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

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

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

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

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

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

(d) The Board of Supervisors finds and declares:

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

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

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

■ (Added by Ord. 249-94, App. 7/7/94; amended by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## SEC. 1009.21. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant, except that this Article shall not affect the policy making marijuana offenses the lowest law enforcement priority under Chapter 96B of the Administrative Code nor affect any laws or regulations regarding medical cannabis;

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

(u) "Tobacco shop" means any tobacco retailer whose principal or core business is selling tobacco products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of tobacco products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of tobacco products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a tobacco product or tobacco paraphernalia. A "tobacco shop" cannot be located within or adjacent to a restaurant, bar or tavern, either as a room accessible from the restaurant, bar or tavern or from a separate entrance.

(v) "Tourist lodging facilities" means a retail use that provides tourist accommodations, including guest rooms or suites, which are intended or designed to be used, rented, or hired out to guests (transient visitors) intending to occupy the room for less than 32 consecutive days. This definition includes, but is not limited to, buildings containing six or more guest rooms designated and certified as tourist units under Chapter 41 of the San Francisco Administrative Code. For purposes of this Article, "tourist lodging facilities" include,

but are not limited to, motels that contain guest rooms or suites which are independently accessible from the outside, with garage or parking space located on the lot, and designed for, or occupied by, automobile-traveling transient visitors, hotels, motels, youth hostels, bed and breakfast inns, and hotel and motel guest rooms. The term "tourist lodging facilities" includes all lobbies, offices and internal passageways to guest rooms and suites within the same enclosed building or buildings as the guest rooms or suites.

(Added by Ord. 249-94, App. 7/7/94; amended by Ord. 58-10, File No. 091443, App. 3/25/2010; Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016; Oper. 2/11/2017)

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

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

(1) Facilities owned or leased by the City and County of San Francisco; every commission, department, or agency with jurisdiction over such property shall adopt regulations or policies implementing the provisions of this Article 19F; provided, however, with respect to facilities located outside the City and County of San Francisco, the regulations or policies shall prohibit smoking in enclosed areas during all times;

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

(3) Polling places;

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

(5) Educational facilities;

(6) Business establishments, except that the smoking of medicinal cannabis and adult use cannabis may occur on the premises of a Medicinal Cannabis Retailer, a Cannabis Retailer, or a Cannabis Microbusiness, subject to the limitations set forth in Section 1009.23 of this Article 19F;

(7) Nonprofit establishments, except that persons qualifying under California Health and Safety Code Section 11362.7 *et seq.* to use medical marijuana may smoke medical marijuana on the premises of a Medical Cannabis Dispensary with a valid permit issued by the Department of Public Health under Article 33 of the Health Code prior to September 26, 2017, provided that the medical cannabis dispensary was not prohibited by the Planning Department, the Planning Commission, or the Director of Health from allowing smoking on the premises;

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

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

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

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

(12) Convention facilities;

(13) Restaurants;

(14) Bars and Taverns, except for historically compliant semi-enclosed smoking rooms, the portion of an outdoor patio at least 10 feet away from the entry, exit, or operable window of the bar or tavern, or as specified in Sections 1009.23(c) or 1009.23(d);

(15) Tourist Lodging Facilities;

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

(17) Tobacco Shops, except as specified in Section 1009.23(e);

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

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

(b) No owner, manager, or operator of a sports stadium shall knowingly or intentionally permit, and no person on the premises shall engage in, the smoking of tobacco products in any enclosed or open space at a sports stadium.

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

(d) Smoking is prohibited in service waiting areas, which are defined as any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money, such as ATMs, bank teller windows, telephones, ticket lines, movie theater lines, concert lines, athletic event lines,

performance event lines and cab stands, and including the ticketing, boarding and waiting areas of public transit systems, including bus, train, trolley and cable car stops and shelters.

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

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

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

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

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

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

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

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

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

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

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

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

(j) Violation of any part of this Article is not grounds for eviction of residential tenants.

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

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## SEC. 1009.23. EXCEPTIONS.

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

- (a) Tourist lodging facility room accommodations designated as smoking rooms, provided that the owners or managers of tourist lodging facilities shall designate at least 75 percent of the guest rooms in tourist lodging facilities as smoke free. The owners or managers of tourist lodging facilities must permanently designate particular guest rooms as smoke free and ashtrays and matches are to be permanently removed from such smoke free rooms. "No smoking" signage shall be displayed in smoke free rooms. Where possible, designated smoke free rooms shall not be located on the same floor as smoking rooms. It is recommended that smoking be relegated to the top floor with at least 50 percent of the rooms on the top floor designated as smoke free. Owners and managers of tourist lodging facilities may designate 100% of guest rooms as smoke free; if such 100% smoke free designation is made, "no smoking" signage shall only be required in the common areas on each floor of such tourist lodging facilities.
- (b) Private homes, including but not limited to dwelling units, but not the common areas, of multi-unit housing complexes and mixed-use buildings.
- (c) Bars and Taverns located in commercial buildings that submit to the Director within three months of the effective date of this ordinance an application and all documents required by the Director to demonstrate that the bar or tavern had no employees as of December 31, 2009. If the Director approves the application under the criteria of this subsection, the bar or tavern may allow smoking on the premises but must immediately 1) notify the Director if the establishment hires any employees, and 2) submit all documents to the Director verifying eligibility for this exemption upon request. The exemption will continue for as long as the establishment has no employees and the building where the bar or tavern is located continues to be commercial. Bars and Taverns located in mixed-use buildings that 1) have no employees as of December 31, 2009, and 2) relocate to a commercial building within two years of the effective date of this ordinance may allow smoking in their establishment after relocation to a commercial building if they submit to the Director within three months of the effective date of this ordinance an application and all documents required by the Director to demonstrate that the bar or tavern had no employees as of December 31, 2009. The application must also document that the Bar or Tavern will be located in a commercial building within two years of the effective date of this ordinance. This exemption status immediately expires if the establishment hires employees, or is no longer located in a commercial building.
- (d) Bars and Taverns located in commercial buildings that submit to the Director within three months of the effective date of this ordinance an application and all documents required by the Director to demonstrate that an area in the establishment is a historically compliant semi-enclosed smoking room and qualified as such as of December 31, 2009. If the Director denies the application because the Bar or Tavern does not comply with the above requirements, the Director may allow the establishments to make alterations to comply with this requirement; if the Bar or Tavern completes the alterations to the Director's satisfaction, the Director may approve the application. If the Director approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in the historically compliant semi-enclosed smoking room. This exemption status is nontransferable and immediately expires if 1) there is a change in the ownership interest(s) of the Bar or Tavern, 2) the room no longer meets the definition of historically compliant semi-enclosed smoking room, 3) there are structural alterations made to the smoking room after December 31, 2009 not approved by the Director, or 4) the establishment is no longer located in a commercial building. If the Director approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in the historically compliant semi-enclosed smoking room but must immediately notify the Director of any changes that would disqualify the establishment from this exemption. For purposes of this subsection, the term "change in ownership interest(s)" means the aggregate change of 50 percent or more of the ownership of the business within a 12-month period.
- (e) Tobacco Shops that are located in commercial buildings as of December 31, 2009. To qualify for the exemption under this Section, the tobacco shop owner must submit an application and all documents required by the Director. If the Director approves the application, the tobacco shop may allow smoking on the premises. The exemption will continue for as long as the establishment continues to qualify as a tobacco shop and the building where the tobacco shop is located continues to be commercial. The tobacco shop must immediately notify the Director of any change that would disqualify the retailer from this exemption and submit all documents to the Director verifying eligibility upon request.
- (f) Medicinal Cannabis Retailers, Cannabis Microbusinesses, and Cannabis Retailers that have received and maintain:
  - (1) A Cannabis Business Permit issued by the Director of the Office of Cannabis under Article 16 of the Police Code; and
  - (2) A Cannabis Consumption Permit that authorizes the smoking of cannabis, issued by the Director of Health under Article 8A of the Health Code, unless the smoking of cannabis is authorized under subsection (g) of Section 8A.4, pending the approval or denial of an application for such permit.

■ (Added by Ord. 249- 94, App. 7/7/94; amended by Ord. 58-10, File No. 091443, App. 3/25/2010; Ord. [230-17](#), File No. 171042, App. 12/6/2017, Eff. 1/5/2018)

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## SEC. 1009.24. [REPEALED.]

■ (Added by Ord. 249-94, App. 7/7/94; repealed by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.25. VIOLATIONS AND PENALTIES.**

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

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

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

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

- (i) Each day a violation is committed or permitted to continue shall constitute a separate violation;
- (ii) The Director of Public Health shall appoint the hearing officer to conduct hearings for appeals;
- (iii) The fine for any violation issued pursuant to this section shall be paid to the Treasurer of the City and County of San Francisco and credited to the Public Health Environmental Health Code Compliance Fund, authorized by San Francisco Administrative Code Section 10.100-193;
- (iv) The Director may recover any costs and fees, including but not limited to attorneys' fees, for enforcement initiated through this Section and authorized under this Article; and,
- (v) The penalty amounts for citations issued under Administrative Code Chapter 100 shall be the same as those set forth in subsection (c).

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

■ (Added by Ord. 249-94, App. 7/7/94; amended by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.26. COST RECOVERY.**

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

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

■ (Added by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.27. LIENS.**

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

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

▪ (Added by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.29. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

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

▪ (Added by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.30. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL WELFARE.**

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

▪ (Added by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.31. PREEMPTION.**

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

▪ (Added by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.33. SEVERABILITY.**

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

▪ (Added by Ord. 58-10, File No. 091443, App. 3/25/2010)

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## **SEC. 1009.55. DISCLAIMERS.**

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

▪ (Added by Ord. 249-94, App. 7/7/94)

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## **SEC. 1009.37. RELATIONSHIP TO OTHER SMOKING RESTRICTIONS.**

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

(Added by Ord. 249-94, App. 7/7/94)

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# **ARTICLE 19G:**

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## **ENFORCEMENT OF SMOKING PROHIBITIONS**

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## SEC. 1009.40. AUTHORITY.

(a) **Authority.** The provisions of Labor Code Section 6404.5, governing smoking in enclosed places of employment, shall be enforced by peace officers employed by the San Francisco Police Department and by employees of the Department of Public Health designated by the Director of Public Health; provided, however, that employees designated by the Director of Public Health with the authority to enforce Labor Code Section 6404.5 may only issue citations to employers and not to patrons, customers, consumers or other guests.

(b) **Department of Public Health Employees as Public Officers.** In the performance of their duties of monitoring and enforcing compliance with the provisions of Labor Code Section 6404.5, all persons authorized by the Director of Public Health to engage in such enforcement activities shall have the power, authority and immunity of a public officer and employee as set forth in California Penal Code Section 836.5, and to make arrests without a warrant whenever such employees have reasonable cause to believe that a violation of Labor Code Section 6404.5 has taken place in their presence. In any case in which a person is arrested pursuant to this authority and the person does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and shall release the person on their promise to appear as prescribed by Chapter 5C (commencing with Section 853.6) of the California Penal Code.

The Director of Public Health, in coordination with the Chief of Police, shall establish and cause to be administered an enforcement training program designed to instruct each employee so authorized by this Section to exercise arrest and citation authority. Such training shall include guidance and instruction regarding the evidentiary prerequisites to proper prosecution of violations thereof; the appropriate procedures for making arrests or otherwise prudently exercising such arrest and citation authority; and the legal and practical ramifications and limitations relevant to exercising enforcement authority.

(Added by Ord. 181-95, App. 6/2/95)

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## ARTICLE 19H:

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### PERMITS FOR THE SALE OF TOBACCO

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Sec. 19H.1.	Findings.
Sec. 19H.2.	Definitions.
Sec. 19H.3.	Requirement for Tobacco Sales Permit.
Sec. 19H.4.	Application Procedure: Inspection of Premises; Issuance and Display of Permit.
Sec. 19H.5.	Density Cap.
Sec. 19H.6.	Exceptions for Certain New Permits.
Sec. 19H.7.	Permit and Annual License Fees.
Sec. 19H.8.	Permit may not be Transferred to New Persons or Locations.
Sec. 19H.9.	Enforcement and Inspection.
Sec. 19H.10.	Conduct Violating Health Code Article 19D (Regulating Cigarette Vending Machines).
Sec. 19H.11.	Conduct Violating Police Code Section 4600.3 (Regulating the Self-Service Merchandising of Tobacco Products).
Sec. 19H.12.	Conduct Violating Health Code Article 19F (Prohibiting Smoking in Enclosed Areas and Sports Stadiums).
Sec. 19H.13.	Conduct Violating Tobacco Control Laws.
Sec. 19H.14.	Conduct Violating California Penal Code Section 308 (Prohibiting the Sale of Tobacco to Minors).
Sec. 19H.14-1.	Conduct Violating Health Code Article 19P (Prohibiting the Sale of Tobacco Products to Persons Aged 18, 19, or 20).
Sec. 19H.14-2.	Conduct Violating Health Code Article 19Q (Prohibiting the Sale of Flavored Tobacco Products).
Sec. 19H.14-3.	Conduct Violating Health Code Article 19R (Prohibiting the Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval).
Sec. 19H.15.	Conduct Violating California Labor Code Section 6404.5 (Prohibiting Smoking in Enclosed Places of Employment).
Sec. 19H.16.	Fraudulent Permit Applications.
Sec. 19H.17.	Selling Tobacco without a Permit.
Sec. 19H.18.	Other Enforcement.

Sec. 19H.19.	Time Period of Suspension of Permit; Permit Revocation.
Sec. 19H.20.	Administrative Penalty.
Sec. 19H.21.	Notice of Correction.
Sec. 19H.22.	Notice of Initial Determination.
Sec. 19H.23.	Payment of Administrative Penalties.
Sec. 19H.24.	Appeals to Board of Appeals.
Sec. 19H.25.	Other Remedies.
Sec. 19H.26.	Authority to Adopt Rules and Regulations.
Sec. 19H.27.	City Undertaking Limited to Promotion of the General Welfare.
Sec. 19H.28.	Preemption.
Sec. 19H.29.	Severability.

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## **SEC. 19H.1. FINDINGS.**

The Board of Supervisors of the City and County of San Francisco hereby finds and declares as follows:

(a) Tobacco is the leading cause of preventable death in the United States and kills nearly 6 million people each year globally (World Health Organization 2013). According to the Centers for Disease Control and Prevention (CDC), more than 400,000 deaths in the United States each year are attributable to tobacco use, including one-third of all cancer deaths.

(b) In addition to the obvious adverse health impact, tobacco related death and disease have an adverse economic impact. The CDC reports that tobacco use costs the United States billions of dollars each year.

(c) State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors. (California Penal Code section 308.) State law also prohibits public school students from smoking or using tobacco products while on campus, attending school-sponsored activities, or under the supervision or control of school district employees. (California Education Code section 48901(a).) In addition, state law prohibits smoking in enclosed places of employment (California Labor Code section 6404.5). Moreover, San Francisco has adopted ordinances that ban cigarette vending machines in the City (Health Code Article 19D), prohibit pharmacy sales of Tobacco Products (Health Code Article 19J), prohibit the self-service merchandising of Tobacco Products, except in places to which access by minors is prohibited by law (Police Code Section 4600.3), prohibit smoking in enclosed areas and sports stadiums (Health Code Article 19F) and prohibit the use of electronic cigarettes where smoking is not allowed (Health Code Article 19N).

(d) Despite these state and local restrictions, minors continue to obtain cigarettes and other Tobacco Products at alarming rates. 36.8% of California youth have smoked an entire cigarette by age 14 according to a 2012 survey conducted by the California Department of Public Health. The former United States Surgeon General Regina Benjamin at a February 2014 summit emphasized that the key factor in the fight against tobacco is preventing minors from becoming smokers. She noted, "for every smoker who dies, there are two so-called replacement smokers trying a cigarette for the first time and getting hooked."

(e) Although it is unlawful to sell Tobacco Products and/or tobacco paraphernalia to minors, in a 2013 California youth buying survey, 7.6% of retailers surveyed unlawfully sold Tobacco Products to minors. These percentages are more concerning locally. San Francisco's Tobacco Sales to minors were reported to be 13.4% of retailers in 2012. Notably, sales in the City to minors are well above the 2012 statewide sales rate of 8.7%. More aggressive policies are needed to keep San Francisco's youth from gaining access to Tobacco Products.

(f) There are approximately 1,001 outlets in San Francisco that are licensed to sell tobacco, that is about 1 retailer for every 111 youth in the community compared to California generally where there are approximately 36,700 licensed tobacco retail stores in California – one for every 254 youth.

(g) San Francisco has a substantial interest in promoting compliance with State laws prohibiting sales of cigarettes and Tobacco Products to minors, in promoting compliance with laws intended to discourage the purchase of Tobacco Products by minors, and in protecting our children from illegally obtained tobacco.

(h) Social norms about smoking influence smoking rates, particularly among those not addicted. Studies have found that strong governmental regulation of smoking corresponds with and may contribute to anti-smoking norms. Social unacceptability has been repeatedly shown to be an important influence on both smoking rates and anti-smoking norms. Children and young people are particularly influenced by cues suggesting smoking is acceptable.

(i) Empirical research connects lower densities of retail outlets with lower consumption of tobacco, particularly among youth. Higher tobacco retail density encourages smoking by making cigarettes more accessible and available, by normalizing tobacco use, and through increasing environmental cues to smoke. Research focused on California has found a higher prevalence of current smoking and experimental smoking among students at schools in areas with a higher density of tobacco outlets. Prevalence of smoking was higher among students at schools in neighborhoods with five or more stores that sell tobacco than among students at schools in neighborhoods without any stores that sell tobacco.

(j) California communities in lower socioeconomic areas with a higher concentration of convenience stores have significantly higher rates of smoking. Residents of these neighborhoods are more at risk for tobacco related disease and death. Likewise, San Francisco's

most disadvantaged neighborhoods are disproportionately impacted by high tobacco retail density. The six supervisorial districts with the highest proportions of tobacco retail sales by population (Districts 3, 5, 6, 9, 10, and 11) also have the lowest median household incomes in the City. District Six, with a median household income of \$38,610, has 270 tobacco permits while District Two, with a median household income of \$102,457, has only 51 tobacco permits. African American and Latino residents are more likely to live in districts with the highest number of tobacco retail outlets.

(k) As the tobacco related public health crisis affects all supervisorial districts in San Francisco, it is in the City's interest to reduce the disproportionate exposure to tobacco outlets that exists among supervisorial districts and to minimize exposure in all supervisorial districts by limiting the number of new tobacco permits issued. District Seven currently has the lowest number (37) of tobacco permitted retailers in San Francisco. Setting a cap slightly above the District Seven density of permitted tobacco retailers as the maximum for each supervisorial district will begin to address the disparity of exposure to tobacco outlets among supervisorial districts and reduce the density of tobacco vendors overall.

(l) San Franciscans support limiting and reducing the number of permits for the sale of tobacco. In a 2012 representative survey of over 220 San Francisco residents, 88.5% felt that too many stores selling cigarettes is bad for community health; almost 74% would support a law that very gradually reduces the number of stores selling cigarettes and Tobacco Products given that the highest density of these is in low income neighborhoods; and 87% would support a policy that would reduce the amount of Tobacco Products available.

(m) Restaurants, and other non-traditional tobacco retailers in California are more likely to sell tobacco to minors than other retailers. 13.1% percent of restaurants and other nontraditional retailers sold tobacco to minors compared to 8.7% of all other California retailers.

(n) Young adult Bar patrons in one California study reported a current smoking rate of 47 percent, nearly four times the 2010 state rate of smoking prevalence for young adults.

(o) Social environments such as Bars and clubs are important venues for public health efforts to address young adult smoking.

(p) This Article 19H is designed to promote the public interest in ensuring that San Francisco businesses operate in compliance with applicable laws regulating tobacco, including laws prohibiting the sale of tobacco to minors and laws regulating smoking.

» (Added as Sec. 1009.50 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.2. DEFINITIONS.

The following words and phrases, whenever used in this Article, shall be construed as defined in this section. Words in the singular include the plural and words in the plural include the singular. Words in the present tense include the future.

"Application" means the application submitted under Section 19H.4 for a Tobacco Sales permit allowing the person or business to engage in the sale of tobacco products at an Establishment.

"Bar" means an area, whether a separate, stand-alone business or part of a larger business which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages.

"Cap" means the figure set forth in Section 19H.5 and represents the total number of permitted Establishments that may operate in each supervisorial district.

"Change of Ownership" means a change of 50 percent or more of the ownership of the business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer of 25 percent of the stock ownership of the permittee shall be deemed to be a Change of Ownership.

"Density Cap" has the same meaning as "Cap."

"Department" means the Department of Public Health.

"Director" means the Director of Health or his or her designee.

"District Population" means the population reported by the Department of Elections in each of the 11 supervisorial districts as required by Charter Section 13.110.

"Establishment" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items.

"Permittee" means a person who has obtained a Tobacco Sales permit for a specific location pursuant to this Article.

"Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

"Restaurant" means a business that primarily stores, packages, serves, vends, or otherwise prepares food for human consumption on the premises. "Restaurant" includes, but is not limited to businesses primarily engaged in providing (1) food services to patrons who order and are served while seated on the premises, and pay after eating, and (2) food services where patrons generally order and pay before eating on the premises. "Restaurant" also includes separately owned food facilities that are located in a grocery store but does not include the grocery store.

"School" means a public or private kindergarten, elementary, middle, junior high or high school, or a school combining some or all of the above school grades.

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

"Tobacco Sales" means sales, or any offer to sell or exchange, for any form of consideration, Tobacco Products to any person by any person who operates an Establishment. "Tobacco Sales" includes any display of Tobacco Products.

"Tobacco Shop" means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia.

(Added as Sec. 1009.51 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015; amended by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016; Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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### SEC. 19H.3. REQUIREMENT FOR TOBACCO SALES PERMIT.

It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, in any establishment without first obtaining and maintaining a valid tobacco sales permit from the Department for each location where tobacco sales are conducted. Nothing in this Article shall be construed to grant any person obtaining and maintaining a tobacco sales permit any status or right other than the right to act as a tobacco retailer at the location identified on the face of the permit. The obtaining of a permit does not in and of itself transform a business into a retail tobacco or wholesale shop within the meaning of California Labor Code section 6404.5. It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, at an establishment for which the Director has suspended the tobacco sales while the period of suspension remains in effect. It shall be unlawful for any person to engage in or allow tobacco sales at an establishment for which the Director has revoked the tobacco sales permit for three years from the date of revocation. Permits are valid as long as the annual license fees are paid.

(Added as Sec. 1009.52 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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### SEC. 19H.4. APPLICATION PROCEDURE: INSPECTION OF PREMISES; ISSUANCE AND DISPLAY OF PERMIT.

(a) **Application.** An Application for a Tobacco Sales permit shall be submitted in the name of the person(s) proposing to engage in the sale of Tobacco Products and shall be signed by each person or an authorized agent thereof. The Application shall be accompanied by the appropriate fees as described in Section 35 of the Business and Tax Regulations Code and such fees shall include any required inspections or other work performed by the Planning Department as required by the referral of the application. A separate Application is required for each location where Tobacco Sales are to be conducted. All Applications shall be submitted on a form supplied by the Department and shall contain the following information:

1. The name, address, e-mail address, and telephone number of the Applicant;
2. The Establishment name, address, e-mail address, and telephone number for each location for which a Tobacco Sales permit is sought;
3. Such other information as the Director deems appropriate, including the Applicant's type of business, and whether the Applicant has previously been issued a permit under this Article that is, or was at any time, suspended or revoked. No permit shall be issued if the Application is incomplete or inaccurate.

(b) **Inspection by Director.** Upon receipt of a completed Application and fees, the Director may inspect the location at which Tobacco Sales are to be permitted. The Director may also ask the Applicant to provide additional information that is reasonably related to the determination whether a permit may issue.

(c) **Referral to the Planning Department.** The Director will then refer Applications requiring inspection as to proximity to Schools and existing Establishments to the Planning Department. The Planning Department upon referral shall analyze the Application against the most recent data provided by the Department to determine whether the Applicant's location will comply with subsections (f)(3) and (f)(4) and whether the location qualifies as a Tobacco Shop.

(d) **Issuance of Permit.** If the Director is satisfied that the Applicant has met the requirements of this Article and that issuance of the permit will not violate any law, the Department shall issue the permit. An Establishment may not sell Tobacco Products until the permit is issued.

(e) **Display of Permit.** Each permittee shall display the permit prominently at each location where Tobacco Sales occur. No permit that has been suspended shall be displayed during the period of suspension. A permit that has been revoked is void and may not be displayed.

(f) **Grounds for Denial.**

- (1) No new permit shall be issued if the Director finds that the Applicant is in violation of Health Code Article 19; Police Code

Section 4600.3 (regulating the self-service merchandising of tobacco products), or the California Labor Code.

(2) No new permit shall be issued if the Applicant does not have a valid current Tobacco Retail Permit from the State Board of Equalization where the Applicant is required to have the State Board of Equalization permit except for businesses selling only electronic cigarettes.

(3) No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a School as measured by a straight line from the nearest point of the property line on which a School is located to the nearest point of the property line on which the Applicant's Establishment will be located.

(4) No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing Establishment as measured by a straight line from the nearest point of the property line on which the Applicant's Establishment will be located to the nearest point of the property line of the existing Establishment.

(5) No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits.

(6) No new permit shall be issued to any Applicant whose main purpose is offering food or alcoholic beverages for sale for consumption on the premises, including Bars and Restaurants.

(7) No new permit shall be issued to any Applicant for operation of a Tobacco Shop.

(8) No new permit shall be issued for a location not previously occupied by a permitted Establishment.

(g) **Pending Applications.** Applications that have been submitted to the Director for approval as of December 9, 2014 shall not be subject to the Section 19H.4(f)(2)-19H.4(f)(8) and Section 19H.5.

(Added as Sec. 1009.53 by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 194-08, File No. 080594, App. 8/7/2008; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.5. DENSITY CAP.

(a) The Density Cap shall be forty-five (45) permitted Tobacco Sales Establishments in a supervisorial district. The Department shall assess the Density Cap every two years to evaluate whether to recommend to the Board of Supervisors an amendment to this Article to change the number of permitted Establishments as reasonably necessary to advance the public health purposes this Article seeks to achieve. The City may not issue a new permit in any supervisorial district that is at or above the Density Cap at the time of submission of the Application.

(b) Pursuant to its authority under Section 19H.26 to adopt rules, the Department may adopt rules governing the approval process for application submitted in a supervisorial district where the number of permits has fallen below the cap, including rules on the timing for the approval process.

(w) (Added by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.6. EXCEPTIONS FOR CERTAIN NEW PERMITS.

Notwithstanding Section 19H.5 and Sections 19H.4(f)(3), (4), (5) and (7):

(a) If an owner of a retail food store establishment as defined in the Planning Code or Tobacco Shop who holds a Tobacco Sales permit and has been in business for five years as of the effective date of this Section 19H.6, submits an affidavit to the Director that attests to ownership of the business at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit and that also states that the owner is in negotiations with a specific buyer for the retail food store establishment or Tobacco Shop at that location, then that buyer ("new buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the new buyer for the retail food store establishment or Tobacco Shop at that location, on a one-time basis.

(b) If the new buyer submits an affidavit to the Director, stating that the new buyer has been in business continuously as a retail food store establishment or Tobacco Shop at that same location under the Tobacco Sales permit obtained in accordance with subsection (a) and also states that the new buyer has held the permit for at least 10 years, then a subsequent buyer of the retail food store establishment or Tobacco Shop at that location ("subsequent buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the subsequent buyer for the retail food store establishment or Tobacco Shop on a one-time basis.

(c) Where the owner of a retail food store establishment or Tobacco Shop that holds a Tobacco Sales permit as of the effective date of this Section 19H.6, a child of the owner may apply for, and the Director may issue, a Tobacco Sales permit to the child for that retail food store establishment or Tobacco Shop at that location.

(d) An owner of a retail food store establishment or Tobacco Shop holding a Tobacco Sales permit as of the effective date of this Section 19H.6, who must relocate under Chapter 34B of the Building Code may apply for, and the Director may issue, a new Tobacco Sales permit for the location of the owner's retail food store establishment or Tobacco Shop.

(e) An owner of a Bar or Tavern (cigar or smoking bar) who qualified for an exemption under Section 1009.23(d) of this Code who holds a Tobacco Sales permit and has been in business for five years as of the effective date of this Section 19H.6, who submits an affidavit to the Director that attests to ownership of the business at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit and that also states that the owner is in negotiations with a specific buyer for the Cigar or Smoking Bar at that location, then that buyer ("new buyer") may apply for, and the Director may issue, a Tobacco

Sales permit to the new buyer for the Cigar or Smoking Bar at that location, on a one-time basis.

(f) If the new buyer submits an affidavit to the Director, stating that the new buyer has been in business continuously as a Cigar or Smoking Bar at that same location under the Tobacco Sales permit obtained in accordance with subsection (a) and also states that the new buyer has held the permit for at least 10 years, then a subsequent buyer of the Cigar or Smoking Bar at that location ("subsequent buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the subsequent buyer for the Cigar or Smoking Bar on a one-time basis.

(g) If a spouse or domestic partner acquires the ownership of an Establishment through the death of, or divorce from the owner identified on the permit and submits an affidavit to the Director attesting to the acquisition of the Establishment accompanied by any documentation requested by the Director, the Director may issue a Tobacco Sales permit to the Applicant spouse or domestic partner on a one-time basis.

■ (Added by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.7. PERMIT AND ANNUAL LICENSE FEES.

(a) The Department shall charge every applicant for a tobacco sales permit a non-refundable application fee for the initial inspection and processing of the application and an annual license fee sufficient to cover the costs of annual inspections, as determined by the Director. The application and processing fee shall be \$53 and is otherwise governed by Section 35 of the San Francisco Business and Tax Regulations Code. The annual fee is listed in Section 249.16 of the San Francisco Business and Tax Regulations Code. The Fee shall be due annually on March 31 of each year, pursuant to Section 76.1, Article 2 of the San Francisco Business and Tax Regulations Code.\*

(b) Beginning with fiscal year 2008-2009, fees set forth in this Section and referred to in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue which is significantly more than the costs of providing the services for which the fees<sup>1</sup> are assessed.

The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

(Added as Sec. 1009.54 by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. [238-11](#), File No. 111101, App. 12/15/2011; Eff. 1/14/2012; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

### CODIFICATION NOTE

■ 1. So in Ord. [238-11](#) and previously.

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## SEC. 19H.8. PERMIT MAY NOT BE TRANSFERRED TO NEW PERSONS OR LOCATIONS.

As described in Section 77 of the San Francisco Business and Tax Regulations Code, tobacco permits may not be transferred or assigned.

■ (Added as Sec. 1009.55 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.9. ENFORCEMENT AND INSPECTION.

The Director may enforce all provisions of this Article. Specific grounds for enforcement are set forth in Sections 19H.10 through 19H.18. Upon presentation of proper credentials, the Director may enter and inspect at any time during regular business hours any Establishment that is engaging in Tobacco Sales, or is suspected by the Director of engaging in such sales.

■ (Added as Sec. 1009.56 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.10. CONDUCT VIOLATING HEALTH CODE ARTICLE 19D (REGULATING CIGARETTE VENDING MACHINES).

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Article 19D (regulating cigarette vending machines), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

- (b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.57 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015;  
, amended by Ord. [6-17](#), File No. 161081, App. 1/20/2017, Eff. 2/19/2017)

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## **SEC. 19H.11. CONDUCT VIOLATING POLICE CODE SECTION 4600.3 (REGULATING THE SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS).**

- (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Police Code Section 4600.3 (regulating the self-service merchandising of tobacco products), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

- (b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.58 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.12. CONDUCT VIOLATING HEALTH CODE ARTICLE 19F (PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS).**

- (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Article 19F (prohibiting smoking in enclosed areas and sports stadiums), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

- (b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.59 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.13. CONDUCT VIOLATING TOBACCO CONTROL LAWS.**

- (a) If the Director decides that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates local, state, or federal law applicable to Tobacco Products or Tobacco Sales, including Administrative Code Chapter 105 (imposing Cigarette Litter Abatement Fee), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

- (b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.60 by Ord. 194-08, File No. 080594, App. 8/7/2008; amended by Ord. 173-09, File No. 090724, App. 7/21/2009; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.14. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION 308 (PROHIBITING THE SALE OF TOBACCO TO MINORS).**

- (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates California Penal Code section 308 (prohibiting the sale of tobacco to minors), the Director may suspend a tobacco sales permit as set forth in Section 19H.19.

- (b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.61 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.14-1. CONDUCT VIOLATING HEALTH CODE ARTICLE 19P (PROHIBITING THE SALE OF TOBACCO PRODUCTS TO PERSONS AGED 18, 19, OR 20).**

- (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19P.3 (Sale or Distribution of Tobacco Products to Persons Aged 18, 19, or 20 Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

- (b) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19P.4 (Signage), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

(c) The Director shall commence enforcement of this Section 19H.14-1 by serving either a notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22 of this Article 19H; provided, however, that for a first violation during the period July 1, 2016 through June 30, 2017, the Director may serve only a notice of correction and may not serve a notice of initial determination or impose a permit suspension or administrative penalty. For a second violation occurring within the first twelve months, or a first violation occurring after the first twelve months, the Director may serve either a notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22, and may impose a permit suspension or administrative penalty in accordance with subsections (a) and (b), above.

▪ (Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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## **SEC. 19H.14-2. CONDUCT VIOLATING HEALTH CODE ARTICLE 19Q (PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS).**

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19Q.3 (Sale or Distribution of Flavored Tobacco Products Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

(b) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19Q.4 (Sale or Distribution of Flavored Cigarettes Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

(c) The Director shall commence enforcement under this Section 19H.14-2 by serving either a notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22 of this Article 19H.

(Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

**Editor's Note:**

*This Section was added by Ord. [140-17](#), approved July 7, 2017, then suspended by the filing of a referendum petition. As part of [Proposition E](#), it was adopted by the voters at the June 5, 2018 election, and became effective 30 days after the election results were declared.*

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## **SEC. 19H.14-3. CONDUCT VIOLATING HEALTH CODE ARTICLE 19R (PROHIBITING THE SALE OR DISTRIBUTION OF ELECTRONIC CIGARETTES LACKING FOOD AND DRUG ADMINISTRATION PREMARKET ORDER OF APPROVAL).**

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Section 19R.2 (Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

(b) The Director shall commence enforcement under this Section 19H.14-3 by serving either a notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22.

▪ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## **SEC. 19H.15. CONDUCT VIOLATING CALIFORNIA LABOR CODE SECTION 6404.5 (PROHIBITING SMOKING IN ENCLOSED PLACES OF EMPLOYMENT).**

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.62 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015; ▪ amended by Ord. [6-17](#), File No. 161081, App. 1/20/2017, Eff. 2/19/2017)

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## **SEC. 19H.16. FRAUDULENT PERMIT APPLICATIONS.**

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

(b) Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties as set forth in Section 19H.20.

(c) Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may revoke a Tobacco Sales permit.

(d) Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties in addition to either suspending or revoking the Tobacco Sales permit.

(e) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(f) Any person who obtained a permit by fraud or misrepresentation may be prosecuted for a misdemeanor punishable by (1) a fine not to exceed \$100 for a first violation; (2) a fine not to exceed \$200 for a second violation within one year; and (3) a fine not to exceed \$500 for a third and for each subsequent violation within one year, and by the imposition of administrative penalties in the amounts set forth in Article<sup>1</sup> 19H.20 of the Health Code.

(Added as Sec. 1009.63 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015; amended by Ord. [6-17](#), File No. 161081, App. 1/20/2017, Eff. 2/19/2017; Ord. [140-25](#), File No. 250606, App. 8/1/2025, Eff. 9/1/2025)

#### CODIFICATION NOTE

- 1. So in Ord. [140-25](#).

### SEC. 19H.17. SELLING TOBACCO WITHOUT A PERMIT.

(a) Upon a final decision by the Director that any person has engaged in the sale of tobacco at any Establishment without a permit, the Director may impose administrative penalties as set forth in Section 19H.20. Persons with a permit application pending under Section 1009.53<sup>1</sup> may sell tobacco without violating Section 1009.64<sup>1</sup> until and unless their permit application is rejected by the Director.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article. This Notice of Initial Determination may require that all tobacco sales cease and may impose an administrative penalty.

(c) The City Attorney may maintain an action for injunction to restrain any person from selling tobacco without a valid tobacco sales permit. In any such action, the City Attorney may seek civil penalties and may seek a judicial determination that a person must pay any administrative penalties. The person against whom an injunction issues also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing a civil action to enforce the provisions of this section.

(d) Any person who engages in tobacco sales without the required permit may be prosecuted for a misdemeanor punishable by (1) a fine not to exceed \$250 for a first violation; (2) a fine not to exceed \$500 for a second violation within two years; and (3) a fine not to exceed \$1000 for a third and for each subsequent violation within two years, and by the imposition of administrative penalties in the amounts set forth in Article<sup>2</sup> 19H.20 of the Health Code.

(Added as Sec. 1009.64 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015; amended by Ord. [140-25](#), File No. 250606, App. 8/1/2025, Eff. 9/1/2025)

#### CODIFICATION NOTES

- 1. The sections referenced in the last sentence of division (a) were redesignated as Sec. 19H.4 and this Sec. 19H.17, respectively, by Ord. [259-14](#).
- 2. So in Ord. [140-25](#).

### SEC. 19H.18. OTHER ENFORCEMENT.

(a) Violations of this Article 19H are hereby declared to be public nuisances and may be enforced as set forth in Section 596 of the San Francisco Health Code.

(b) Violations of this Article 19H are hereby declared to be unfair business practices and are presumed to damage each and every resident of the community in which the business operates.

(c) Any person, the owner, or the owner's authorized agent, who violates any provision of this Article 19H shall be liable for a civil penalty of not less than \$250 and not exceeding \$1,000 for each day such violation is committed or permitted to continue. Penalties shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Any penalty assessed and recovered in an action brought pursuant to this subsection (c) shall be paid to the City Treasurer and credited to the Department's Special Fund.

(d) In addition to other remedies provided by this Article 19H or by other law, any violation of this ordinance may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial abatement proceedings, civil or criminal Code enforcement proceedings, and suits for injunctive relief. The person against whom a successful civil action is brought shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco.

(Added as Sec. 1009.65 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015; amended by Ord. [140-25](#), File No. 250606, App. 8/1/2025, Eff. 9/1/2025)

### SEC. 19H.19. TIME PERIOD OF SUSPENSION OF PERMIT; PERMIT REVOCATION.

When this Article 19H allows the Director to suspend a permit, the following sanctions may be imposed:

- (a) The Director may suspend the permit for a maximum of 90 days for the first violation.
- (b) If a second violation occurs within 24 months of the first violation, the Director may suspend the permit for a maximum of six months.
- (c) Upon the third violation, if within 24 months of the prior violation, the Director may suspend the permit for a maximum of one year.
- (d) Upon the fourth or subsequent violation within 24 months of the prior violation, the Director may revoke the permit.
- (e) Each suspension is an independent sanction and is served consecutively.

(Added as Sec. 1009.66 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015;  
amended by Ord. [140-25](#), File No. 250606, App. 8/1/2025, Eff. 9/1/2025)

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## SEC. 19H.20. ADMINISTRATIVE PENALTY.

When this Article 19H allows the Director to impose an administrative penalty, the Director may assess an administrative penalty (1) not exceeding \$500 for a first violation; (2) not exceeding \$750 for a second violation; and (3) not exceeding \$1,000 for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation.

(Added as Sec. 1009.67 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015; amended by Ord. [140-25](#), File No. 250606, App. 8/1/2025, Eff. 9/1/2025)

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## SEC. 19H.21. NOTICE OF CORRECTION.

When the Director commences an enforcement action with a notice of correction, the Director shall serve the notice on the Permittee or the Permittee's agent. The notice shall state that the Department has determined that a violation may have occurred and that reasonable grounds exist to support this determination. The notice may require corrective action immediately or upon a schedule required by the Director. The Director may require the Permittee to post the notice of correction at the location where the Department alleges that violations have occurred. If the Permittee fails to obey a notice of correction, the Director may serve a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.68 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.22. NOTICE OF INITIAL DETERMINATION.

When the Director sends a notice of initial determination, the Director shall serve the notice on the permittee or the permittee's agent. The Notice of Initial Determination may require that all tobacco sales cease. The notice shall state the basis for the Department's initial determination, including the alleged acts or failures to act that constitute a basis for suspension, revocation, and/or an administrative penalty as provided in this Article. After affording the permittee an opportunity to provide information contesting the initial determination, the Director shall issue a decision, including an order imposing an administrative penalty, if any. Copies of this decision and related order(s) shall be served upon the party served with the notice of initial determination. If no notice of appeal of the Director's decision is filed within the appropriate period, the decision shall be deemed final and shall be effective 15 days after it was issued.

(Added as Sec. 1009.69 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.23. PAYMENT OF ADMINISTRATIVE PENALTIES.

Unless a timely notice of appeal of the Department's final decision is filed, the Department may require payment of any administrative penalty within 30 days of the Director's decision. The Department shall make a written demand for payment by personal delivery or certified mailed notice to the person sanctioned. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The person against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this section, including obtaining a court order requiring payment of the administrative penalty.

(Added as Sec. 1009.71 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 19H.24. APPEALS TO BOARD OF APPEALS.

- (a) **Right of Appeal.** The final decision of the Director to deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article I of the San Francisco Business and Tax Regulations Code. An appeal shall stay the action of the Director.
- (b) **Hearing.** The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article I of the San Francisco Business and Tax Regulations Code.

(Added as Sec. 1009.72 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.25. OTHER REMEDIES.**

Nothing in this Article shall affect any other remedies which are available to the City and County under any law, including (1) Health Code Article 19D (regulating cigarette vending machines); (2) Police Code Section 4600.3 (regulating the self-service merchandising of tobacco products); (3) Health Code Article 19F (prohibiting smoking in enclosed areas and sports stadiums); (4) California Penal Code section 308 (regulating sales of tobacco products to minors); and (5) California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment).

▪ (Added as Sec. 1009.73 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.26. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

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

▪ (Added as Sec. 1009.74 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.27. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL WELFARE.**

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

▪ (Added as Sec. 1009.75 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.28. PREEMPTION.**

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed or expressly authorized by federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by federal or state law.

▪ (Added as Sec. 1009.76 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 19H.29. SEVERABILITY.**

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

▪ (Added as Sec. 1009.77 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.50. [REDESIGNATED.]**

▪ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.1 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.51. [REDESIGNATED.]**

▪ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.2 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.52. [REDESIGNATED.]**

▪ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.3 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.53. [REDESIGNATED.]**

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 194-08, File No. 080594, App. 8/7/2008; redesignated as Sec. 19H.4 and amended by Ord. [259-14](#),

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## SEC. 1009.54. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. [238-11](#), File No. 111101, App. 12/15/2011; Eff. 1/14/2012; redesignated as Sec. 19H.7 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.55. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.8 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.56. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.9 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.57. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.10 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.58. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.11 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.59. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.12 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.60. [REDESIGNATED.]

(Added by Ord. 194-08, File No. 080594, App. 8/7/2008; amended by Ord. 173-09, File No. 090724, App. 7/21/2009; redesignated as Sec. 19H.13 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.61. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.14 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.62. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.15 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.63. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.16 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## SEC. 1009.64. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.17 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.65. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.18 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.66. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.19 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.67. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.20 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.68. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.21 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.69. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.22 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.71. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.23 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.72. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.24 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.73. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.25 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.74. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.26 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.75. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.27 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.76. [REDESIGNATED.]**

■ (Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.28 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

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## **SEC. 1009.77. [REDESIGNATED.]**

## **ARTICLE 19I:**

### **PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS AND FARMERS' MARKETS**

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- Sec. 1009.80. Definitions.
  - Sec. 1009.81. Prohibiting Smoking in City Park and Recreational Areas.
  - Sec. 1009.82. Violations, Penalties and Enforcement.
  - Sec. 1009.83. Disclaimers.
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#### **SEC. 1009.80. DEFINITIONS.**

For purpose of this Article, "smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant.

■ (Added by Ord. 28-05, File No. 041307, App. 2/4/2005)

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

- (a) Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market. For purposes of this Article 19I, the term "City department" shall include the Transbay Joint Powers Authority (TJPA) with respect to the Transbay Rooftop Park, provided that the TJPA Board of Directors has not rescinded or revoked the TJPA resolution of consent to the enforcement of this Article 19I for the Transbay Rooftop Park, which is on file with the Clerk of the Board of Supervisors in File No. 180087.
- (b) Each City department with jurisdiction over property subject to this Article shall post signs in appropriate locations to provide public notice that smoking is prohibited.
- (c) The provisions of this Article do not apply in any circumstance where Federal or State law regulates smoking if the Federal or State law preempts local regulation or if the Federal or State law is more restrictive.
- (d) The provisions of this Article do not apply to playgrounds or tot lot sandbox areas, in and around which smoking is prohibited by California Health and Safety Code Section 104495.
- (e) The provisions of this Article do not apply to piers primarily used for commercial purposes.

■ (Added by Ord. 28-05, File No. 041307, App. 2/4/2005; Ord. 110-06, File No. 060393, App. 5/19/2006; Ord. 58-10, File No. 091443, App. 3/25/2010; Ord. [56-18](#), File No. 180087, App. 4/13/2018, Eff. 5/14/2018)

#### **SEC. 1009.82. VIOLATIONS, PENALTIES AND ENFORCEMENT.**

Any person who violates this Article is guilty of an infraction and shall be punished by a fine not exceeding one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation of this Article within a year of a first violation, and five hundred dollars (\$500) for each additional violation of this Article within a year of a first violation. Any peace officer, and pursuant to California Penal Code, Title 3, Section 836.5 any Park Patrol Officer (Classification No. 8208) and Supervisor Park Patrol (Classification No. 8210), shall have the authority to enforce the provisions of this Article. Punishment under this Article shall not preclude punishment pursuant to any provision of law proscribing the act of littering.

■ (Added by Ord. 28-05, File No. 041307, App. 2/4/2005)

#### **SEC. 1009.83. DISCLAIMERS.**

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

(Added by Ord. 28-05, File No. 041307, App. 2/4/2005)

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## **ARTICLE 19J:**

# **PROHIBITING PHARMACIES FROM SELLING TOBACCO PRODUCTS**

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- Sec. 1009.91. Definitions.
- Sec. 1009.92. Prohibition Against Tobacco Product Sales at Pharmacies.
- Sec. 1009.93. Penalties and Enforcement.
- Sec. 1009.94. Expiration of Permit to Sell Tobacco.
- Sec. 1009.95. Authority to Adopt Rules and Regulations.
- Sec. 1009.96. Preemption.
- Sec. 1009.97. City Undertaking Limited to Promotion of General Welfare.
- Sec. 1009.98. Severability.

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## **SEC. 1009.91. DEFINITIONS.**

- (a) "Director" shall mean the Director of the Department of Public Health or his or her designee.
- (b) "Person" shall mean any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind.
- (c) "Pharmacy" shall mean a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.
- (d) "Tobacco Product" shall mean any substance containing tobacco leaf including but not limited to cigarettes, cigars, pipe, tobacco, snuff chewing tobacco, and dipping tobacco.

■ (Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **SEC. 1009.92. PROHIBITION AGAINST TOBACCO PRODUCT SALES AT PHARMACIES.**

No person shall sell tobacco products in a pharmacy.

■ (Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **SEC. 1009.93 PENALTIES AND ENFORCEMENT.**

Administrative penalties shall be assessed and collected by the Director in accordance with San Francisco Administrative Code Chapter 100, a copy of which is on file in Board of Supervisors File No. 080594 and which is hereby incorporated by reference.

■ (Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **SEC. 1009.94. EXPIRATION OF PERMIT TO SELL TOBACCO.**

Any permit to sell tobacco issued to a pharmacy pursuant to Article 19H shall expire on September 30, 2008, and shall not be renewed if sales of tobacco by that pharmacy are prohibited under this Article.

■ (Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **SEC. 1009.95. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

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

■ (Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **SEC. 1009.96. PREEMPTION.**

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed, or expressly authorized by Federal or State law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by Federal or State law.

(Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **SEC. 1009.97. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

In undertaking the adoption and enforcement of this Article, the City and County is assuming an undertaking only to promote the general welfare. The City does not intend to impose the type of obligation that would allow a person to sue for money damages for an injury that the person claims to suffer as a result of a City officer or employee taking or failing to take an action with respect to any matter covered by this Article.

■ (Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **SEC. 1009.98. SEVERABILITY.**

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

(Added by Ord. 194-08, File No. 080594, App. 8/7/2008; Ord. 245-10, File No. 101056, App. 10/6/2010)

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## **ARTICLE 19K:**

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### **PROHIBITING SALES OF TOBACCO PRODUCTS ON PROPERTY OWNED BY OR UNDER THE CONTROL OF THE CITY AND COUNTY OF SAN FRANCISCO**

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- Sec. 19K.1. Definitions.
- Sec. 19K.2. Prohibition Against Tobacco Product Sales, Manufacture, and Distribution on City Property.
- Sec. 19K.3. Exceptions.
- Sec. 19K.4. Penalties and Enforcement.
- Sec. 19K.5. Preemption.

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#### **SEC. 19K.1. DEFINITIONS.**

For purposes of this Article 19K, the following terms have the following meanings:

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

“City Property” means real property owned by the City or under the control of the City through a lease or otherwise, including, but not limited to, property under the administrative jurisdiction of the Port Commission, the Municipal Transportation Agency, or the Public Utilities Commission.

“Director” means the Director of Health, or the Director’s designee.

“Distribute” or “Distribution” means the transfer, by any Person other than a common carrier, of a Tobacco Product at any point from the place of Manufacture or thereafter to the Person who sells the Tobacco Product to an individual for personal consumption.

“Manufacture” means to make, fabricate, assemble, repair, or process a Tobacco Product.

“Person” means any individual, firm, partnership, association, corporation, company, organization, or legal entity of any kind.

“Sell,” “Sale,” and “to Sell” mean any transaction where, for any consideration, ownership of a Tobacco Product is transferred from one Person to another, including but not limited to any transfer of title or possession for consideration, exchange, or barter, in any manner or by any means.

“Tobacco Product” has the meaning set forth in Section 19H.2 of the Health Code.

(Added as Sec. 1010 by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018; amended by Ord. [121-19](#), File No. 190311, App. 6/28/2019, Eff. 7/29/2019)

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## **SEC. 19K.2. PROHIBITION AGAINST TOBACCO PRODUCT SALES, MANUFACTURE, AND DISTRIBUTION ON CITY PROPERTY.**

No Person may Sell, Manufacture, or Distribute Tobacco Products on City Property, except as provided in Section 19K.3. All leases, permits, or agreements awarded by the City allowing any Person to use City Property shall specifically provide that there shall be no Sale, Manufacture, or Distribution of Tobacco Products on such City Property, and such prohibition must be included in all subleases, or other agreements providing for exclusive use of the property.

(Added as Sec. 1010.1 by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated and nonsubstantive amendments made by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018; amended by Ord. [121-19](#), File No. 190311, App. 6/28/2019, Eff. 7/29/2019)

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## SEC. 19K.3. EXCEPTIONS.

(a) The prohibition against Tobacco Product Sales, Manufacture, and Distribution on City Property in Section 19K.2 shall not apply where its application would impair a lease, permit, or use agreement to which the City is a party and is in effect on the effective date of the ordinance in Board File No. 190311 amending this Article 19K. On or after the effective date of that ordinance, the City may not enter into, renew, extend, or materially amend a lease, permit, or use agreement for the use of City Property that does not incorporate the prohibition set forth in Section 19K.2.

(b) The prohibition against Tobacco Product Sales, Manufacture, and Distribution on City Property in Section 19K.2 shall not apply to the passenger terminal complex at San Francisco International Airport.

(c) The prohibition against Tobacco Product Sales, Manufacture, and Distribution on City Property in Section 19K.2 shall not apply to Persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

(Added as Sec. 1010.2 by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated and nonsubstantive amendments made by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018; amended by Ord. [121-19](#), File No. 190311, App. 6/28/2019, Eff. 7/29/2019)

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## SEC. 19K.4. PENALTIES AND ENFORCEMENT.

(a) Administrative penalties for violation of the prohibition set forth in Section 19K.2 shall be assessed and collected by the Director in accordance with Administrative Code Chapter 100.

(b) The City Attorney may at any time institute civil proceedings for injunctive and monetary relief including civil penalties, against any Person for violations of this Article 19K, without regard to whether the Director has assessed or collected administrative penalties.

(c) At any time, the Director may refer a case to the City Attorney's Office for civil enforcement, but a referral is not required for the City Attorney to bring a civil action under subsection (b).

(d) Any Person who violates any provision of this Article 19K shall be subject to injunctive relief and a civil penalty in an amount not to exceed \$1,000 for each violation, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco by the City Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to, the following: the nature and seriousness of the misconduct giving rise to the violation, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(e) The City may recover reasonable attorneys' fees and costs for civil actions brought under this Section 19K.4.

(f) Remedies under this Section 19K.4 are non-exclusive and cumulative to all other remedies available at law or equity.

(Added as Sec. 1010.3 by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated and nonsubstantive amendments made by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018; amended by Ord. [121-19](#), File No. 190311, App. 6/28/2019, Eff. 7/29/2019)

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## SEC. 19K.5. PREEMPTION.

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed, or expressly authorized by federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by Federal or State law.

(Added as Sec. 1010.4 by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018)

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## SEC. 1010. [REDESIGNATED.]

(Added by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated as Sec. 19K.1 by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018)

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## SEC. 1010.1. [REDESIGNATED.]

(Added by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated as Sec. 19K.2 by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018)

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## SEC. 1010.2. [REDESIGNATED.]

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### **SEC. 1010.3. [REDESIGNATED.]**

▪ (Added by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated as Sec. 19K.4 by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018)

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### **SEC. 1010.4. [REDESIGNATED.]**

(Added by Ord. 254-08, File No. 081193, App. 11/7/2008; redesignated as Sec. 19K.5 by Ord. [250-18](#), File No. 180002, App. 11/2/2018, Eff. 12/3/2018)

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## **ARTICLE 19L:**

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### **PROHIBITING SMOKING AT CERTAIN OUTDOOR EVENTS**

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- Sec. 19L.1. Findings.
- Sec. 19L.2. Definitions.
- Sec. 19L.3. Prohibiting Smoking at Certain Outdoor Events.
- Sec. 19L.4. Violations.

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#### **SEC. 19L.1. FINDINGS.**

- (a) The United States Surgeon General's 2006 Report on the Health Consequences of Involuntary Smoking provides the following:
  - (1) Breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer.
  - (2) Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer and 46,000 deaths from heart disease among nonsmokers each year in the United States.
  - (3) Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma.
  - (4) Scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.
- (b) According to several studies conducted measuring the tobacco smoke concentrations in various outdoor settings:
  - (1) Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind, as well as the number and proximity of smokers.
  - (2) Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter. In some situations this level can be found as far away as 13 feet from the burning cigarette.
  - (3) To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road.
  - (4) Studies on a cruise ship found that even while cruising at 20 knots and with unlimited air volume, outdoor smoking areas contained carcinogens in nearly the same amounts as inside the ship's casino where smoking was allowed.
- (c) According to the 2009 California Health Interview Survey, creating smoke free areas helps protect the health of the 88.4% of San Franciscans who are nonsmokers.
- (d) According to the 2008 Study of California Voters' Attitudes About Secondhand Smoke Exposure found that 75% thought that secondhand smoke is harmful, 64% were bothered by secondhand smoke, 73% support laws restricting smoking at outdoor public places, and people living in cities with strong smoke free air laws are more likely to believe smoking is not acceptable and that smokers should attempt to quit smoking.
- (e) A 2011 Opinion Survey conducted at seven street events in San Francisco from August to October, found that out of the almost 600 surveys collected: 67% favored making all street events in San Francisco smoke-free and 58.9% have been bothered by secondhand smoke at street events.
- (f) According to the California Clean Air Project, California Secondhand Smoke Policy Database, as of 2008, there were 187 California cities and counties with local laws restricting smoking in at least one outdoor area.
- (g) The Board of Supervisors finds and declares:

- (1) Nonsmokers have no adequate means to protect themselves from the damage inflicted upon them by secondhand smoke.
- (2) Regulation of smoking at outdoor events is necessary to protect the health, safety, welfare, comfort, and environment of nonsmokers.
- (3) It is, therefore, the intent of the Board of Supervisors, in enacting this Article, to protect nonsmokers from secondhand smoke and to eliminate smoking, as much as possible, at certain outdoor events.

■ (Added by Ord. [6-13](#), File No. 120772, App. 2/4/2013, Eff. 3/6/2013)

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## SEC. 19L.2. DEFINITIONS.

- (a) "Event producer" means any person or organization charged with developing, designing, managing and/or implementing an outdoor event, and shall include any person or organization submitting a permit application under Article 6 of the San Francisco Transportation Code, except for individuals or neighborhood organizations applying for a Neighborhood Block Party.
- (b) "Neighborhood Block Party" means an <sup>a<sup>1</sup></sup> neighborhood gathering that is a one block closure in a residential neighborhood, does not block or affect intersections, and is sponsored by a neighborhood organization or individual who lives on the block to be closed.
- (c) "Outdoor Event" means an outdoor assembly regardless of the number of people gathering on property owned by the City and County of San Francisco ("City"), including sidewalks and streets that requires approval by the Interdepartmental Staff Committee on Traffic and Transportation (ISCOTT) and/or the Director of Transportation under Article 6 of the San Francisco Transportation Code, such as, but not limited to, street fairs, athletic events, performances, competitions, arts and crafts events, and food events, except Neighborhood Block Parties.
- (d) "Secondhand Smoke" means smoke emitted from lighted, smoldering, or burning tobacco, when the person smoking is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the person smoking.
- (e) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant, except that this Article shall not affect the policy making marijuana offenses the lowest law enforcement priority under Chapter 96B of the Administrative Code nor affect any laws or regulations regarding medical cannabis.
- (f) "Smoking Signs" means the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle, with a diameter of at least three inches, with a red bar across it, and which includes a statement at the bottom of the sign that reads "SF Health Code Article 19L" in font no less than 1/8 inch in height.

(Added by Ord. [6-13](#), File No. 120772, App. 2/4/2013, Eff. 3/6/2013; Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016; Oper. 2/11/2017)

### CODIFICATION NOTE

■ 1. So in Ord. [6-13](#).

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## SEC. 19L.3. PROHIBITING SMOKING AT CERTAIN OUTDOOR EVENTS.

- (a) Smoking is prohibited at outdoor events on property owned by the City that require approval under Article 6 of the San Francisco Transportation Code, except for Neighborhood Block Parties.
- (b) The event producer shall notify the public that the event is smoke-free by meeting the following conditions:
  - (1) All electronic or print promotional materials, including but not limited to, website, electronic promotional materials, print advertisements, radio, television, internet, newspaper, media, shall state that this is a smoke free event per SF Health Code, Article 19L.
  - (2) Each event shall have at least one Smoking Sign at one point of entry and exit.
  - (3) Events with amplified sound must make an announcement at the start and at least one announcement every two hours at each stage during an event that this is a smoke free event.

■ (Added by Ord. [6-13](#), File No. 120772, App. 2/4/2013, Eff. 3/6/2013)

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## SEC. 19L.4. VIOLATIONS.

The Director of Transportation and ISCOTT will consider any prior violations of Section 19L.3(b) on all permit applications for outdoor events requiring their review and approval.

(Added by Ord. [6-13](#), File No. 120772, App. 2/4/2013, Eff. 3/6/2013)

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## ARTICLE 19M:

### DISCLOSURE TO PROSPECTIVE RESIDENTIAL TENANTS OF WHETHER A UNIT IS SMOKE FREE OR SMOKING OPTIONAL, AND

# **INFORMING EXISTING RESIDENTIAL TENANTS WHERE SMOKING IS OPTIONAL**

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- Sec. 19M.1. Definitions.
- Sec. 19M.2. Designation of Units as Smoke Free or Smoking Optional, Disclosure to Tenants and Prospective Tenants.
- Sec. 19M.3. Procedure for Designation of Residential Rental Units as Smoke Free or Smoking Optional.
- Sec. 19M.4. Relationship of Health Code Article 19M to Certain Existing Law.
- Sec. 19M.5. Intent, Limitations.

**Editor's Note:**

*For clarity and consistency, the editor has adjusted and/or corrected the designation of subdivisions of various sections within this Article.*

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## **SEC. 19M.1. DEFINITIONS.**

- (a) **Multi-Unit Housing Complex.** "Multi-Unit Housing Complex" means as defined in Health Code Article 19F at Section 1009.21.
- (b) **Smoking or To Smoke.** "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco.

■ (Added by Ord. [12-13](#), File No. 121107, App. 2/5/2013, Eff. 3/7/2013)

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## **SEC. 19M.2. DESIGNATION OF UNITS AS SMOKE FREE OR SMOKING OPTIONAL, DISCLOSURE TO TENANTS AND PROSPECTIVE TENANTS.**

An owner or manager ("landlord") of a Multi-Unit Housing Complex with less than one hundred percent (100%) smoke free residential rental units shall:

- (a) Designate each residential unit as either smoke free or smoking optional, using the process and timeline provided in Section 19M.3 "Procedure for Designation of Residential Units as Smoke Free or Smoking Optional."
- (b) Include in residential vacancy listings the unit designation as smoke free or smoking optional.
- (c) Provide a residential rental applicant with a list showing the designation of units in the building that are smoking optional, before offering a unit to that applicant.
- (d) Disclose in writing to any residential rental applicant whether the landlord has designated the unit for rent as a smoke free unit or as a smoking optional unit, before entering into the new lease or rental agreement.
- (e) Develop and maintain a master list for tenants that identifies the location of each smoking optional unit. Notify tenants that this master list is available upon request in the leasing office or from building management.

■ (Added by Ord. [12-13](#), File No. 121107, App. 2/5/2013, Eff. 3/7/2013)

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## **SEC. 19M.3. PROCEDURE FOR DESIGNATION OF RESIDENTIAL RENTAL UNITS AS SMOKE FREE OR SMOKING OPTIONAL.**

In compliance with Section 19M.2(a), owners of residential rental property in the City and County of San Francisco shall make an initial designation of each unit as either smoke free or smoking optional.

- (a) (1) Property owners of 50 residential rental units or less in the City and County of San Francisco as of January 1, 2013, or their successor(s) in interest, shall finalize that initial designation no later than December 31, 2013.
- (2) Property owners of 51 or more residential rental units in the City and County of San Francisco as of January 1, 2013, or their successor(s) in interest, shall finalize that initial designation no later than December 31, 2014.
- (b) Property owners shall provide written notice to each existing residential tenant clearly stating the proposed initial designation of their unit as smoke free or smoking optional.
  - (1) The proposed designation shall be smoke free, if the existing residential rental unit has a current lease designating the unit as smoke free.
  - (2) The proposed designation shall be smoking optional, if the existing residential rental unit does not have a current lease designating the unit as smoke free.
  - (3) Tenants in a unit with a proposed designation as smoking optional, may request that the property owner designate the unit as

smoke free.

- (4) The property owner shall provide each existing residential tenant with at least 30 days to review the proposed designation and make comments, before finalizing the initial designation.

■ (Added by Ord. [12-13](#), File No. 121107, App. 2/5/2013, Eff. 3/7/2013)

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## **SEC. 19M.4. RELATIONSHIP OF HEALTH CODE ARTICLE 19M TO CERTAIN EXISTING LAW.**

- (a) **Health Code Article 19F.** These Health Code Article 19M provisions are in addition to Health Code Article 19F provisions regarding smoke free common areas.
- (b) **California Civil Code Section 1947.5.** This Health Code Article 19M is intended to be supplemental to, and not inconsistent with, California Civil Code section 1947.5.

■ (Added by Ord. [12-13](#), File No. 121107, App. 2/5/2013, Eff. 3/7/2013)

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## **SEC. 19M.5. INTENT, LIMITATIONS.**

- (a) The designation and disclosure of residential rental units as smoke free or smoking optional pursuant to this Article 19M is intended to be an educative and informative tool for landlords, tenants, and prospective tenants.
- (b) The property owner's designation and disclosure of smoke free units under this Article 19M is not a guarantee that units designated as smoke free will be smoke free, or that the property will be free from secondhand smoke. Accuracy of the designations and disclosures is dependent in significant part on compliance by each residential tenant and any guests.
- (c) The provisions of this Article 19M do not create any right of action, or create any remedies or defenses or other means of legal redress.
- (d) The provisions of this Article 19M are in addition to any other rights of action or remedies or defenses or other means of legal redress that may be available to the tenant or the City.

(Added by Ord. [12-13](#), File No. 121107, App. 2/5/2013, Eff. 3/7/2013)

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## **ARTICLE 19N:**

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### **ELECTRONIC CIGARETTES – RESTRICTIONS ON SALE AND USE**

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- Sec. 19N.1. Findings and Statement of Purpose.
- Sec. 19N.2. Definitions.
- Sec. 19N.3. Tobacco Sales Permit Required.
- Sec. 19N.4. Prohibiting the Use of Electronic Cigarettes Wherever Smoking of Tobacco Products Is Banned.
- Sec. 19N.5. Prohibiting the Sale of Electronic Cigarettes Wherever the Sale of Tobacco Products Is Prohibited.
- Sec. 19N.6. City Undertaking Limited to Promotion of General Welfare.
- Sec. 19N.7. Rules and Regulations.
- Sec. 19N.8. Preemption.
- Sec. 19N.9. Severability.

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## **SEC. 19N.1. FINDINGS AND STATEMENT OF PURPOSE.**

- (a) Electronic smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, are battery-operated devices that may resemble cigarettes, although they do not contain tobacco leaf. People who use electronic smoking devices inhale vaporized liquid nicotine extracted from tobacco, or inhale other vaporized liquids, created by heat through an electronic ignition system, and exhale the vapor in a way that mimics smoking.
- (b) Electronic cigarettes are presently available for purchase and use in San Francisco.
- (c) The FDA's Center for Drug Evaluation and Research, Office of Compliance purchased two samples of electronic cigarettes and components from two leading brands. These samples included 18 of the various flavored, nicotine, and no-nicotine cartridges offered for use with these products. These cartridges were obtained to test some of the ingredients contained in them and inhaled by users of electronic cigarettes. The FDA's Center for Drug Evaluation and Research, Division of Pharmaceutical Analysis (DPA) analyzed the

cartridges from these electronic cigarettes for nicotine content and for the presence of other tobacco constituents, some of which are known to be harmful to humans, including those that are potentially carcinogenic or mutagenic. The DPA's analysis of the electronic cigarette samples showed:

- (1) The products contained detectable levels of known carcinogens and toxic chemicals to which users could be exposed.
- (2) Quality control processes used to manufacture these products are inconsistent or non-existent.
- (3) Tobacco-specific impurities suspected of being harmful to humans – anabasine, myosmine, and β-nicotyrine – were detected in a majority of the samples tested.
- (4) Three different electronic cigarette cartridges with the same label were tested and each cartridge emitted a markedly different amount of nicotine with each puff. The nicotine levels per puff ranged from 26.8 to 43.2 mcg nicotine/100 mL puff.
- (d) The Surgeon General has found that the chemical nicotine is a powerful pharmacologic agent that acts in the brain and throughout the body and is highly addictive. The United States Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and is a highly toxic substance. Use of nicotine in any form may cause or contribute to cardiovascular disease, complications of hypertension, reproductive disorders, cancers of many types, and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux.
- (e) The FDA has raised concerns that electronic cigarettes, including but not limited to flavored electronic cigarettes, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products. A CDC study showed that in 2011 4.7% of all high schoolers had tried e-cigarettes and that in 2012 that number increased to 10.0% of all high schoolers. Electronic cigarettes may not be legally sold to minors in California. Electronic smoking devices and other unapproved nicotine delivery products have a high appeal to youth due to their high tech design and availability in child-friendly flavors like cotton candy, bubble gum, chocolate chip cookie dough and cookies and cream milkshake.
- (f) Health authorities have also expressed concerns that the vapors released into the air through the use of an electronic cigarette present a danger to others who breathe them.
- (g) The use of an electronic cigarette in public is often indistinguishable from the use of traditional tobacco products, prompting confusion among members of the public wherever smoking is prohibited. Consequently, persons who smoke traditional tobacco products may be induced to do so in areas where smoking is illegal under the mistaken belief that smoking is legal in such areas, or that the ban on smoking in such areas is not being enforced.
- (h) Owners of establishments such as office buildings and restaurants encounter similar obstacles seeking to comply with the laws prohibiting smoking in certain locations. An owner may request that a patron stop smoking cigarettes in a restaurant only to have the patron demonstrate that it is an electronic cigarette. The Owner may also be placed in the position of having to confront and examine the cigarettes of any number of customers absent a prohibition on the use of electronic cigarettes where traditional cigarettes are banned.
- (i) The agencies charged with enforcing compliance in enclosed and unenclosed spaces will similarly have to devote considerable time and resources determining the individuals smoking electronic cigarettes versus traditional cigarettes.
- (j) Some agencies in San Francisco have already adopted restrictions on e-cigarette usage including San Francisco General Hospital, Laguna Honda Hospital, AT&T Ballpark, University of California-San Francisco, San Francisco Department of Public Health and the San Francisco International Airport.

■ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## SEC. 19N.2. DEFINITIONS.

- (a) "Director" means the Director of Public Health or his or her designee.
- (b) "Electronic Cigarette" or "E-cigarette" means any device with a heating element, a battery, or an electronic circuit that provides nicotine or other vaporized liquids to the user in a manner that simulates smoking tobacco.
- (c) "Establishment" means any store, stand, booth, concession or other enterprise that engages in the retail sales of tobacco products and/or electronic cigarettes.

■ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## SEC. 19N.3. TOBACCO SALES PERMIT REQUIRED.

- (a) An establishment must have a valid tobacco sales permit obtained pursuant to Health Code Section 1009.52 to sell electronic cigarettes.
- (b) The Director may enforce this section pursuant to Articles 19 *et seq.* of the Health Code including but not limited to Article 19H.

■ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## SEC. 19N.4. PROHIBITING THE USE OF ELECTRONIC CIGARETTES WHEREVER SMOKING OF TOBACCO PRODUCTS IS BANNED.

(a) The use of electronic cigarettes is prohibited wherever smoking of tobacco products is prohibited by law including Articles 19 *et seq.* of the Health Code.

(b) The Director may enforce this section pursuant to Articles 19 *et seq.* of the Health Code including but not limited to the Articles prohibiting smoking in certain spaces or areas.

▪ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## **SEC. 19N.5. PROHIBITING THE SALE OF ELECTRONIC CIGARETTES WHEREVER THE SALE OF TOBACCO PRODUCTS IS PROHIBITED.**

(a) The sale of electronic cigarettes is prohibited wherever the sale of tobacco products is prohibited by law, including as prohibited in Articles 19 *et seq.* of the Health Code.

(b) The Director may enforce this section pursuant to Articles 19 *et seq.* of the Health Code including but not limited to Article 19J.

▪ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## **SEC. 19N.6. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

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

▪ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## **SEC. 19N.7. RULES AND REGULATIONS.**

The Director, after a noticed public hearing, may adopt rules and regulations to carry out the provisions of this Article. Such rules and regulations shall take effect 15 days after the public hearing. Violation of any such rule or regulation may be grounds for administrative or civil action against the permittee pursuant to this Article.

▪ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## **SEC. 19N.8. PREEMPTION.**

(a) Nothing in this Article shall be interpreted or applied so as to create any power, duty or obligation in conflict with, or preempted by, any Federal or State law. Even if not preempted by Federal or State law, the provisions of this Article shall not apply if the Federal or State law is more restrictive.

(b) This Article shall not apply to any FDA-approved product marketed for therapeutic purposes.

(c) This Article shall not affect any laws or regulations regarding medical cannabis.

▪ (Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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## **SEC. 19N.9. SEVERABILITY.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2014)

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# **ARTICLE 19O:**

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## **[SMOKELESS TOBACCO – USE PROHIBITED AT ATHLETIC VENUES]**

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Sec. 19O.1.	Findings.
Sec. 19O.2.	Definitions.

Sec. 19O.3.	Prohibiting the Use of Tobacco Products at Athletic Venues.
Sec. 19O.4.	Rules and Regulations.
Sec. 19O.5.	Enforcement.
Sec. 19O.6.	Signs.
Sec. 19O.7.	Preemption.
Sec. 19O.8.	Severability.
Sec. 19O.9.	Undertaking for the General Welfare.
Sec. 19O.10.	Operative Date.

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## SEC. 19O.1. FINDINGS.

Public health authorities, including the Surgeon General and the National Cancer Institute, have found that smokeless tobacco use is hazardous to health and can easily lead to nicotine addiction. The National Cancer Institute states that chewing tobacco and snuff contain 28 cancer-causing agents and the U.S. National Toxicology Program has established smokeless tobacco as a "known human carcinogen."

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

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

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

In a letter to former Major League Baseball Commissioner Bud Selig following the 2014 death of baseball icon Tony Gwynn due to salivary gland cancer, nine leading health care organizations, including the American Medical Association, American Cancer Society, American Lung Association, American Heart Association, Campaign for Tobacco-Free Kids, and American Dental Association, stated that, "Use of smokeless tobacco endangers the health of major league ballplayers. It also sets a terrible example for the millions of young people who watch baseball at the ballpark or on TV and often see players and managers using tobacco."

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

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

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

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

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

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

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

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

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

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## **SEC. 19O.2. DEFINITIONS.**

"Director" means the Director of Health or his or her designee.

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

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## **SEC. 19O.3. PROHIBITING THE USE OF TOBACCO PRODUCTS AT ATHLETIC VENUES.**

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

(b) No owner, manager, or operator of a "sports arena" including stadiums as defined in Article 19F of the Health Code shall knowingly or intentionally permit, and no person on the premises shall engage in the use of tobacco products in any enclosed or open part of the sports arena.

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## **SEC. 19O.4. RULES AND REGULATIONS.**

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

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## **SEC. 19O.5. ENFORCEMENT.**

(a) Violations of Section 19O.3(a) that occur on property owned or under the jurisdiction of the City, including but not limited to the Recreation and Park Commission, are subject to the enforcement provisions, remedies and fines set forth in Article 19I of the Health Code.

(b) Violations of Section 19O.3(b) are subject to the enforcement provisions, penalties, remedies and fines set forth in Article 19F of the Health Code.

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## **SEC. 19O.6. SIGNS.**

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

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## **SEC. 19O.7. PREEMPTION.**

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

state law.

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## SEC. 19O.8. SEVERABILITY.

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

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## SEC. 19O.9. UNDERTAKING FOR THE GENERAL WELFARE.

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

■ (Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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## SEC. 19O.10. OPERATIVE DATE.

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

(Added by Ord. [59-15](#), File No. 150242, App. 5/8/2015, Eff. 6/7/2015, Oper. 1/1/2016)

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# ARTICLE 19P:

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## PROHIBITING THE SALE OF TOBACCO PRODUCTS TO PERSONS AGED 18, 19, OR 20

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- Sec. 19P.1. Findings.
- Sec. 19P.2. Definitions.
- Sec. 19P.3. Sale or Distribution of Tobacco Products to Persons Aged 18, 19, or 20 Prohibited.
- Sec. 19P.4. Signage.
- Sec. 19P.5. Administrative Regulations.
- Sec. 19P.6. No Conflict with Federal or State Law.
- Sec. 19P.7. Severability.

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### SEC. 19P.1. FINDINGS.

Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year. It is known to cause cancer, heart disease, and respiratory diseases, among other health disorders.

Each day, 700 children under the age of 18 become regular, daily smokers; and almost one-third will eventually die from smoking. If current trends continue, 5.6 million of today's youth will die prematurely from a smoking-related illness.

According to a 2014 Report by the United States Surgeon General, cigarette smoking today is even more dangerous than previously thought. Cigarette smoking has been linked to disease of nearly all organs of the body.

The adverse health effects of tobacco use are not limited to smoking. The National Cancer Institute and the International Agency for Research on Cancer report that use of smokeless tobacco causes oral, pancreatic, and esophageal cancer; and may also cause heart disease, gum disease, and oral lesions other than cancer, such as leukoplakia (precancerous white patches in the mouth).

Further, electronic cigarettes (also known as e-cigarettes) also present significant health risks. E-cigarettes contain nicotine, a highly addictive neurotoxin. Exposure to nicotine during adolescence can harm brain development and predispose youth to future tobacco use. In addition, electronic cigarette aerosol has been found to contain at least ten chemicals that are on California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.

In addition to the adverse health impacts of tobacco use, the treatment of tobacco-related diseases adds tremendous costs, in the billions

of dollars, to this country's health care system. A 2014 report by the University of California, San Francisco estimated that in 2009, the cost of smoking in San Francisco amounted to over \$380 million, including direct health care costs and indirect costs from lost productivity due to illness and premature death.

State law prohibits the sale of tobacco products to persons under the age of 18. In spite of the ban on sales to minors, and numerous other tobacco control policies implemented at the federal, state, and local levels, 63% of smokers in California start smoking by age 18. National data show that 95% of adult smokers begin smoking before they turn 21.

In San Francisco, almost 2.7% of middle school and 9.1% of high school students smoke. The highest rate of smoking is among San Francisco's young adults (ages 18-24), 15.8% of whom smoke.

State law also bans the sale of electronic cigarettes to minors. In spite off this ban, preliminary data of more than 430,000 middle and high school students from the California Healthy Kids Survey found that in 2013, 6.3% of 7th graders, 12.4% of 9th graders, and 14.3% of 11th graders had used e-cigarettes in the past 30 days. Among young adults (18 to 29 years old), e-cigarette use tripled in only one year, from 2.3% to 7.6%.

A 2005 study based on data from the California Tobacco Survey, a large, population-based telephone survey, found that 82% of adolescents who had ever smoked obtained their cigarettes from others, mostly friends. A substantial percentage (40.9%) of the people giving the cigarettes were 18 years or older, with most of them (31.3%) being 18, 19, or 20. Adolescents who were 16 or 17 were especially likely to get their cigarettes from persons aged 18 through 20.

In 2015, the Institute of Medicine, a division of the National Academies of Sciences, Engineering, and Medicine, concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 through 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12% decrease in the overall smoking rate.

The Institute of Medicine also has predicted that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for people born in the United States between 2000 and 2019, and would result in near-immediate reductions in preterm births, low birth weight babies, and sudden infant death syndrome.

Raising the minimum age to purchase tobacco products is likely to have a similar effect as has raising the legal drinking age to 21, which has led to reduced alcohol use and dependence among persons under 21. This Article 19P will likely result in less smoking and tobacco use among San Franciscans under 18 and San Franciscans under 21, sparing people within both age groups from the ravages that develop over time from harmful and highly addictive tobacco products.

■ (Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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## SEC. 19P.2. DEFINITIONS.

For purposes of this Article 19P, the terms "Director," "Establishment," "Tobacco Product," and "Person" shall have the meanings set forth in Health Code Section 19H.2.

■ (Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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## SEC. 19P.3. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS AGED 18, 19, OR 20 PROHIBITED.

- (a) The sale or distribution by an Establishment of any Tobacco Product to a Person aged 18, 19, or 20, is prohibited.
- (b) The Director, or his or her designee, may enforce this Section 19P.3 pursuant to Articles 19 *et seq.* of the Health Code, including but not limited to Article 19H.

■ (Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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## SEC. 19P.4. SIGNAGE.

(a) Every Person to whom a permit shall have been granted pursuant to Health Code Articles 19H or 19N shall post a sign or other notice in the Establishment, stating that in San Francisco it is unlawful to sell Tobacco Products, including smokeless tobacco and electronic cigarettes, to persons who are 18, 19, or 20 years of age. The sign or other notice shall be placed in a conspicuous location in the Establishment, and the letters and numbers on the sign or notice shall be of sufficient size that the message is readily visible to anyone within the Establishment who is considering buying a Tobacco Product. Pursuant to Section 19P.5, the Director may adopt rules, regulations, or guidelines regarding compliance with this Section 19P.4.

(b) The Director, or his or her designee, may enforce this Section 19P.4 pursuant to Articles 19 *et seq.* of the Health Code, including but not limited to Article 19H.

■ (Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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## SEC. 19P.5. ADMINISTRATIVE REGULATIONS.

The Director may adopt rules, regulations, or guidelines for the implementation of this Article 19P.

▪ (Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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## **SEC. 19P.6. NO CONFLICT WITH FEDERAL OR STATE LAW.**

Nothing in this Article 19P shall be interpreted or applied so as to create any requirement, power or duty that is preempted by federal or state law.

▪ (Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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## **SEC. 19P.7. SEVERABILITY.**

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

(Added by Ord. [31-16](#), File No. 151179, App. 3/11/2016, Eff. 4/10/2016, Oper. 7/1/2016)

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# **ARTICLE 19Q:**

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## **PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS**

- Sec. 19Q.1. Findings.
- Sec. 19Q.2. Definitions.
- Sec. 19Q.3. Sale or Distribution of Flavored Tobacco Products Prohibited.
- Sec. 19Q.4. Sale or Distribution of Flavored Cigarettes Prohibited.
- Sec. 19Q.5. Administrative Regulations.
- Sec. 19Q.6. Enforcement.
- Sec. 19Q.7. No Conflict with Federal or State Law.
- Sec. 19Q.8. Severability.

**Editor's Note:**

*This Article, comprising Sections 19Q.1 – 19Q.8, was added by Ord.[140-17](#), approved July 7, 2017, then suspended by the filing of a referendum petition. As part of Proposition E, it was adopted by the voters at the June 5, 2018 election, and became effective 30 days after the election results were declared.*

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## **SEC. 19Q.1. FINDINGS.**

(a) Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes, the financial costs it imposes on society, and the burdens it places on our health care system. The financial cost of tobacco use in San Francisco alone amounts to \$380 million per year in direct health care expenses and lost productivity.

(b) Flavored tobacco products are commonly sold by California tobacco retailers. For example: 97.4% of stores that sell cigarettes sell menthol cigarettes; 94.5% of stores that sell little cigars sell them in flavored varieties; 84.2% of stores that sell electronic smoking devices sell flavored varieties; and 83.8% of stores that sell chew or snus sell flavored varieties. 70% of tobacco retailers within 1,000 feet of San Francisco schools sell flavored tobacco products other than menthol cigarettes, and nearly all sell menthol cigarettes.

(c) Each day, about 2,500 children in the United States try their first cigarette; and another 400 children under 18 years of age become new regular, daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored. Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products. As tobacco companies well know, menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a “graduation strategy” to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine. It is therefore unsurprising that young people are much more likely to use menthol-, candy- and fruit-flavored tobacco products, including not just cigarettes but also cigars, cigarillos, and hookah tobacco, than adults. Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle school and high school smokers report using flavored little cigars or flavored cigarettes. Further, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students

between 2011 and 2015. Nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy and bubble gum.

(d) Much as young people disproportionately use flavored tobacco products including menthol cigarettes, the same can be said of certain minority groups. In one survey, the percentage of people who smoke cigarettes that reported smoking menthol cigarettes in the prior month included, most dramatically, 82.6% of Blacks or African-Americans who smoke cigarettes. The statistics for other groups were: 53.2% of Native Hawaiians or Other Pacific Islanders who smoke cigarettes; 36.9% of individuals with multiracial backgrounds who smoke cigarettes; 32.3% of Hispanics or Latinos who smoke cigarettes; 31.2% of Asians who smoke cigarettes; 24.8% of American Indians or Alaska Natives who smoke cigarettes; and 23.8% of Whites or Caucasians who smoke cigarettes. People who identify as LGBT and young adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use. The disproportionate use of menthol cigarettes among targeted groups, especially the extremely high use among African-Americans, is troubling because of the long-term adverse health impacts on those groups.

(e) Between 2004 and 2014, overall smoking prevalence decreased, but use of menthol cigarettes increased among both young adults (ages 18-25) and other adults (ages 26+). These statistics are consistent with the finding that smoking menthol cigarettes reduces the likelihood of successfully quitting smoking. Scientific modeling has projected that a national ban on menthol cigarettes could save between 300,000 and 600,000 lives by 2050.

▪ (Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

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## SEC. 19Q.2. DEFINITIONS.

For purposes of this Article 19Q, the following definitions shall apply:

“Characterizing Flavor” means a Distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a Distinguishable taste or aroma or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.

“Cigarette” has the meaning set forth in 21 U.S.C. § 387(3), as may be amended from time to time.

“Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.

“Director” has the meaning set forth in Health Code Section 19H.2.

“Distinguishable” means perceivable by either the sense of smell or taste.

“Establishment” has the meaning set forth in Health Code Section 19H.2.

“Flavored Cigarette” means a Cigarette that contains a Constituent that imparts a Characterizing Flavor.

“Flavored Tobacco Product” means any Tobacco Product, other than a Cigarette, that contains a Constituent that imparts a Characterizing Flavor.

“Labeling” means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.

“Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.

“Tobacco Product” has the meaning set forth in Health Code Section 19H.2.

▪ (Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

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## SEC. 19Q.3. SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

(a) The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.

(b) There shall be a rebuttable presumption that a Tobacco Product, other than a Cigarette, is a Flavored Tobacco Product if a Manufacturer or any of the Manufacturer’s agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product’s Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

▪ (Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

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## SEC. 19Q.4. SALE OR DISTRIBUTION OF FLAVORED CIGARETTES PROHIBITED.

(a) The sale or distribution by an Establishment of any Flavored Cigarette is prohibited.

(b) There shall be a rebuttable presumption that a Cigarette is a Flavored Cigarette if a Manufacturer or any of the Manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Cigarette has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Cigarette has a Characterizing Flavor.

▪ (Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

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## SEC. 19Q.5. ADMINISTRATIVE REGULATIONS.

The Director may adopt rules, regulations, or guidelines for the implementation and enforcement of this Article 19Q.

▪ (Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

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## SEC. 19Q.6. ENFORCEMENT.

The Director, or his or her designee, may enforce Sections 19Q.3 and 19Q.4 pursuant to Articles 19 *et seq.* of the Health Code, including but not limited to Article 19H.

▪ (Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

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## SEC. 19Q.7. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article 19.Q<sup>1</sup> shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

(Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

### CODIFICATION NOTE

▪ 1. So in [Proposition E](#), 6/5/2018.

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## SEC. 19Q.8. SEVERABILITY.

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

(Added by [Proposition E](#), 6/5/2018, Eff. 7/21/2018, Oper. 7/21/2018)

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# ARTICLE 19R:

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## PROHIBITING THE SALE OF ELECTRONIC CIGARETTES LACKING FOOD AND DRUG ADMINISTRATION PREMARKET APPROVAL

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- Sec. 19R.1. Definitions.
- Sec. 19R.2. Sale or Distribution of Electronic Cigarettes Lacking Food and Drug Administration Premarket Order of Approval Prohibited.
- Sec. 19R.3. Administrative Regulations.
- Sec. 19R.4. Enforcement.
- Sec. 19R.5. No Conflict with Federal or State Law.

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## SEC. 19R.1. DEFINITIONS.

For purposes of this Article 19R, the following terms have the following meanings:

“Director” has the meaning set forth in Health Code Section 19H.2.

“Electronic Cigarette” has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.

“Establishment” has the meaning set forth in Health Code Section 19H.2.

“New Tobacco Product” has the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time.

■ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## **SEC. 19R.2. SALE OR DISTRIBUTION OF ELECTRONIC CIGARETTES LACKING FOOD AND DRUG ADMINISTRATION PREMARKET ORDER OF APPROVAL PROHIBITED.**

The sale or distribution by an Establishment of an Electronic Cigarette is prohibited where the Electronic Cigarette:

- (a) Is a New Tobacco Product;
- (b) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and
- (c) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.

■ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## **SEC. 19R.3. ADMINISTRATIVE REGULATIONS.**

The Director may adopt rules, regulations, or guidelines for the implementation and enforcement of this Article 19R.

■ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## **SEC. 19R.4. ENFORCEMENT.**

The Director may enforce Section 19R.2 under Articles 19 *et seq.* of the Health Code, including but not limited to Article 19H.

■ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## **SEC. 19R.5. NO CONFLICT WITH FEDERAL OR STATE LAW.**

Nothing in this Article 19R shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

(Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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# **ARTICLE 19S:**

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## **PROHIBITING THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS IN SAN FRANCISCO**

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- Sec. 19S.1. Definitions.
- Sec. 19S.2. Prohibition on Sale or Distribution of Tobacco Products.
- Sec. 19S.3. Administrative Regulations.
- Sec. 19S.4. Enforcement.
- Sec. 19S.5. No Conflict with Federal or State Law.
- Sec. 19S.6. Severability.

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## **SEC. 19S.1. DEFINITIONS.**

For purposes of this Article 19S, the following terms have the following meanings:

“Characterizing Flavor” has the meaning set forth in Health Code Section 19Q.2.

“Cigarette” has the meaning set forth in Health Code Section 19Q.2.

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

“Constituent” has the meaning set forth in Health Code Section 19Q.2.

“Director” means the Director of Health, or the Director’s designee.

“Distinguishable” has the meaning set forth in Health Code Section 19Q.2.

“Distribute” or “Distribution” means the transfer, by any Person other than a common carrier, of a Tobacco Product at any point from the place of Manufacture or thereafter to the Person who sells the Tobacco Product to an individual for personal consumption.

“Electronic Cigarette” has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.

“Flavored Tobacco Product” has the meaning set forth in Health Code Section 19Q.2.

“Labeling” has the meaning set forth in Health Code Section 19Q.2.

“New Tobacco Product” has the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time.

“Packaging” has the meaning set forth in Health Code Section 19Q.2.

“Person” has the meaning set forth in Health Code Section 19H.2.

“Sell,” “Sale,” and “to Sell” mean any transaction where, for any consideration, ownership of a Tobacco Product is transferred from one Person to another, including but not limited to any transfer of title or possession for consideration, exchange, or barter, in any manner or by any means.

“Tobacco Product” has the meaning set forth in Health Code Section 19H.2.

■ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## SEC. 19S.2. PROHIBITION ON SALE OR DISTRIBUTION OF TOBACCO PRODUCTS.

(a) No Person shall Sell or Distribute any Flavored Tobacco Product to a Person in San Francisco. There shall be a rebuttable presumption that a Tobacco Product, other than a Cigarette, is a Flavored Tobacco Product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product’s Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

(b) No Person shall Sell or Distribute an Electronic Cigarette to a Person in San Francisco where the Electronic Cigarette:

- (1) Is a New Tobacco Product;
- (2) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and
- (3) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.

■ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## SEC. 19S.3. ADMINISTRATIVE REGULATIONS.

The Director may adopt rules, regulations, or guidelines for the implementation of this Article 19S.

■ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## SEC. 19S.4. ENFORCEMENT.

(a) Violations of this Article 19S or of any rule or regulation issued under this Article shall be punishable by administrative fines imposed pursuant to administrative citations. Administrative Code Chapter 100 “Procedures Governing the Imposition of Administrative Fines,” as amended from time to time, shall govern the issuance and enforcement of administrative citations, and collection and review of administrative fines, to enforce this Article and any rule or regulation adopted pursuant to this Article.

(b) The City Attorney may at any time institute civil proceedings for injunctive and monetary relief including civil penalties, against any Person for violations of this Article 19S, without regard to whether the Director has assessed or collected administrative penalties.

(c) At any time, the Director may refer a case to the City Attorney’s Office for civil enforcement, but a referral is not required for the City Attorney to bring a civil action under subsection (b).

(d) Any Person that violates any provision of this Article 19S shall be subject to injunctive relief and a civil penalty in an amount not to exceed \$1,000 for each violation, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco by the City Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to, the following: the nature and seriousness of the misconduct giving rise to the violation, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the misconduct, and the defendant’s assets, liabilities, and net worth.

(e) The City may recover reasonable attorneys’ fees and costs for civil actions brought pursuant to this Section 19S.4.

(f) Remedies under this Section 19S.4 are non-exclusive and cumulative to all other remedies available at law or equity.

▪ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## **SEC. 19S.5. NO CONFLICT WITH FEDERAL OR STATE LAW.**

Nothing in this Article 19S shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

▪ (Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)

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## **SEC. 19S.6. SEVERABILITY.**

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

(Added by Ord. [122-19](#), File No. 190312, App. 6/28/2019, Eff. 7/29/2019, Oper. 1/29/2020)