

ARTICLE 19D: PROHIBITING CIGARETTE VENDING MACHINES

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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)

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)

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)

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 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 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.

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

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)