

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

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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; Ord. 58-10, File No. 091443, App. 3/25/2010)

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 12X 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; Ord. 58-10, File No. 091443, App. 3/25/2010)

SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES, CERTAIN UNENCLOSED AREAS, AND ENCLOSED STRUCTURES CONTAINING CERTAIN USES AND CERTAIN AREAS OF 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; 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;

(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;

(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, except that smoking will be allowed in outdoor and sidewalk dining areas of restaurants until six months after the effective date of this ordinance;

(14) Bars and Taverns, except for historically compliant semi-enclosed smoking rooms, the portion of an outdoor patio at least ten feet away from the entry, exit or operable window of the bar or tavern, or as specified in Section 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 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 except in (1) ramps outside seating areas, (2) private suites and corridors to private suites, and (3) areas designated for parking. Any portion of a sports stadium used as a bar, restaurant, or service area shall be governed by the provisions of this Article. For purposes of this subsection, a sports stadium means a facility which has a seating capacity of at least 30,000 people.

(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 ejection 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.

SEC. 1009.23. EXCEPTIONS.

The following places shall not be subject to this Article:

(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.

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

SEC. 1009.24. RESERVED.

(Added by Ord. 249-94, App. 7/7/94; Repealed by Ord. 58-10, File No. 091443, App. 3/25/2010)

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; Ord. 58-10, File No. 091443, App. 3/25/2010)

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)

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)

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)

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)

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)

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)

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)

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)