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San Francisco Health Code

ARTICLE 190: [BAN ON SMOKELESS TOBACCO USE]



New Ordinance Notice

Publisher's Note: This Article has been **ADDED** by new legislation (Ord. [59-15](#), approved 5/8/2015, effective 6/7/2015, operative 1/1/2016). Although not yet operative, the text of the Article and its constituent sections is included below for the convenience of the Code user.

- Sec. 190.1. Findings.
- Sec. 190.2. Definitions.
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SEC. 190.1. 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)

SEC. 190.2. 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)

SEC. 190.3. 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)

SEC. 190.4. 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 190.

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

SEC. 190.5. ENFORCEMENT.

(a) Violations of Section 190.3(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 190.3(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)

SEC. 190.6. SIGNS.

Any person who owns, operates, or manages property subject to this Article 190 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)

SEC. 190.7. PREEMPTION.

Nothing in this Article 190 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)

SEC. 190.8. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase, or word of this Article 190, 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)

SEC. 190.9. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Article 190, 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)

SEC. 190.10. OPERATIVE DATE.

This Article 190 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)