

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

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3 **Ordinance updating findings based on recent studies; amending San Francisco Health**

4 **Code Sections 1009.20, 1009.21, 1009.22, 1009.23, 1009.25, and 1009.81, and adding**

5 **Sections 1009.26, 1009.27, 1009.28, and 1009.29, to prohibit smoking in 1) business**

6 **establishments and bars regardless of whether owner-operated, 2) common areas of**

7 **multi-unit housing complexes, 3) tourist lodging facilities, 4) tobacco shops, 5) charity**

8 **bingo games, 6) taxicabs and other motor vehicles for hire, 7) unenclosed dining areas**

9 **of restaurants, 8) service waiting areas, 9) areas outside entrances, exits and operable**

10 **windows and vents of commercial buildings except at the curb of the nearest street,**

11 **sidewalk or alley, 10) farmers markets, and 11) vehicles owned by the City and County**

12 **of San Francisco; establishing obligations for property owners and managers to**

13 **prevent smoking in prohibited areas; adding administrative procedures and penalties;**

14 **deleting criminal penalties; adding provisions for cost recovery and liens; and making**

15 **conforming changes in the Health Code by repealing Section 1009.24.**

16 Note: Additions are *single-underline italics Times New Roman*;

17 deletions are *strikethrough italics Times New Roman*.

18 Board amendment additions are double underlined.

19 Board amendment deletions are ~~strikethrough normal~~.

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

20 Section 1. The San Francisco Health Code is hereby amended by amending Sections

21 1009.20, 1009.21, 1009.22, 1009.23, 1009.25, and 1009.81, adding Sections 1009.26,

22 1009.27, 1009.28, and 1009.29, and repealing Section 1009.24, to read as follows:

23 **ARTICLE 19F: PROHIBITING SMOKING IN ENCLOSED AREAS, CERTAIN UNENCLOSED**

24 **AREAS, AND SPORTS STADIUMS**

25

1 **SEC. 1009.20. FINDINGS.**

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

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

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

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

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

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

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

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

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

3 (9) (1) Involuntary smoking Secondhand smoke is a cause of disease, including
4 lung cancer, in healthy nonsmokers.

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

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

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

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

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

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

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

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

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

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

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

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

24 **(b) (d)** The Board of Supervisors finds and declares:
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1 (1) Nonsmokers have no adequate means to protect themselves from the
2 damage inflicted upon them by secondhand smoke~~when they involuntarily inhale tobacco~~
3 ~~smoke~~.

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

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

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10 **SEC. 1009.21. DEFINITIONS.**

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

15 (a) "Bar" or "Tavern" means ~~an area~~ any facility primarily ~~which is~~ devoted to the
16 serving of alcoholic beverages for consumption by patrons on the premises and in which the
17 serving of food is only incidental to the consumption of such beverages. "Bar" or "Tavern"
18 includes but is not limited to those facilities that are free standing, the bar portion of a restaurant, or a
19 portion of a building used in conjunction with another use or within a hotel, motel, or similar transient
20 occupancy establishment.

21 (b) "Business establishment" means any retail establishment, office, business,
22 store, factory, warehouse, storage facility or other place operated as a commercial venture.
23 The term includes any place where services are provided or goods are manufactured,
24 distributed, processed, assembled, sold or displayed for sale on a wholesale or retail basis.

1 The term also includes any place operated as part of the commercial venture, such as places
2 that provide accounting, management, personnel, information processing, accounting,
3 communication, financial and other support services that is owner operated, operated with
4 employees, or operated with volunteers.

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

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

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

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

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

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

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

11 ~~(h)(g)~~ "Enclosed" means: (1) any covered or partially covered space having more than 50
12 percent of its perimeter area walled in or otherwise closed to the outside such as a covered porch with
13 more than two walls, or (2) any space open to the sky ("uncovered") having more than 75 percent of
14 its perimeter area walled in or otherwise closed to the outside such as a courtyard. But an uncovered
15 space of 3,000 square feet or more shall not be considered enclosed, such as a field in an open-air
16 arena.

17 ~~(i)~~ "Mixed-use building" means a building with commercial and residential units.

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

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

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

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

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

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

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

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

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

17 ~~(s)(p)~~ *"Tourist lodging facilities" means a retail use that provides tourist accommodations,*
18 *including guest rooms or suites, which are intended or designed to be used, rented, or hired out to*
19 *guests (transient visitors) intending to occupy the room for less than 32 consecutive days. This*
20 *definition includes, but is not limited to, buildings containing six or more guest rooms designated and*
21 *certified as tourist units under Chapter 41 of the San Francisco Administrative Code. For purposes of*
22 *this Article, "tourist lodging facilities" include, but are not limited to, motels that contain guest rooms*
23 *or suites which are independently accessible from the outside, with garage or parking space located on*
24 *the lot, and designed for, or occupied by, automobile-traveling transient visitors, hotels, motels, youth*
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1 hostels, bed and breakfast inns, and hotel and motel guest rooms. The term "tourist lodging facilities"
2 includes all lobbies, offices and internal circulation to guest rooms and suites within the same enclosed
3 building or buildings as the guest rooms or suites.

4 (t)(q) "Tobacco Shop" means any store that engages in the sale of tobacco and tobacco-
5 related products and any portion of any store devoted to the sale of tobacco and tobacco-
6 related products and paraphernalia, including hookah pipes. any tobacco retailer whose
7 principal or core business is selling tobacco products, tobacco paraphernalia, or both, as
8 evidenced by any of the following: 50% or more of floor area and display area is devoted to
9 the sale or exchange of tobacco products, tobacco paraphernalia, or both; 70% or more of
10 gross sales receipts are derived from the sale or exchange of tobacco products, tobacco
11 paraphernalia, or both; or 50% or more of completed sales transactions include a tobacco
12 product or tobacco paraphernalia. A "tobacco shop" cannot be located within a restaurant,
13 bar or tavern, either as a room accessible from the restaurant, bar or tavern or from a
14 separate entrance.

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

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

23 (1) Facilities owned or leased by the City and County of San Francisco; every
24 commission, department or agency, with jurisdiction over such property shall adopt

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

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

9 (3) Polling places;

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

13 (5) Educational facilities;

14 (6) Business establishments;

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

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

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

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

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

3 (12) Convention facilities;

4 (13) Restaurants, except that smoking will be allowed in outdoor and sidewalk
5 dining areas of restaurants until sixth months after the effective date of this ordinance July 1,
6 2009 including the bar portion of the restaurant; *subject to the provisions of Section 1009.24.*

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

9 (14) Bars and Taverns, except as specified in Sec. 1009.23(c);

10 (15) Tourist Lodging Facilities;

11 (16) Homeless Shelters, including, but not limited to, the sleeping areas;

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

13 (18) Facilities used to conduct charity bingo games pursuant to Penal Code Section
14 326.5, during such times that persons are assembled in the facility in connection with such games;
15 and,-

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

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

20 ~~(b) No owner, manager, or operator of a sports stadium shall knowingly or intentionally~~
21 ~~permit, and no person on the premises shall engage in, the smoking of tobacco products in any~~
22 ~~enclosed or open space at a sports stadium. except in (1) concourses and ramps outside seating areas,~~
23 ~~(2) private suites and corridors to private suites, and (3) areas designated for parking. Any portion of a~~
24 ~~sports stadium used as a bar or restaurant shall be governed by the provisions of this Article regulating~~

1 ~~smoking in bars and restaurants. For purposes of this subsection, a sports stadium means a publicly~~
2 ~~owned facility which has a seating capacity of at least 30,000 people.~~

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

6 ~~(c)~~ Smoking is prohibited in unenclosed dining areas including sidewalk restaurant
7 dining areas.

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

16 ~~(d)(e)~~ Smoking outside outdoors is prohibited within ~~fifteen~~ twenty feet of entrances, exits
17 and operable windows and vents of commercial ~~private, nonresidential~~ buildings is only permitted at
18 the curb of the nearest street, sidewalk or alley where smoking is prohibited pursuant to this
19 Article. If there is no curb within fifteen feet of the building, smoking is prohibited within fifteen
20 feet of entrances, exits, and operable windows and vents of any commercial building.

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

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

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

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

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1 (1) ~~Posted~~ clear and prominent "no smoking" signs at each entrance to the
2 premises and any area where smoking is prohibited on the premises. These signs must be written
3 with letters of no less than one inch in height and include 1) the international "No Smoking" symbol,
4 consisting of a pictorial representation of a burning cigarette enclosed in a red circle, with a diameter
5 of at least six inches, with a red bar across it, and 2) a statement that smoking is in violation of
6 San Francisco Health Code Article 19F.

7 (2) ~~Requested, when appropriate,~~ that ~~such any~~ person smoking in areas where
8 smoking is prohibited under this Article refrain from smoking. But this subsection does not
9 require a property owner or manager of a business to enforce the smoking prohibition in
10 Section 1009.22(d) outside the business by persons who are not patrons of the business.

11 An owner or manager of a multi-unit housing complex must additionally make the request in
12 writing, if the person smoking is a tenant of the complex. For purposes of this subsection, a request
13 that someone refrain from smoking does not require "reasonable steps" shall not include the physical
14 ejection of a person from the premises.

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

17 (4) Remove any ashtrays from the premises.

18 The duties described in Sections (1)-(43) of this Section are baseline requirements and are not
19 the only responsibilities of owners or managers to prevent smoking in multi-unit housing complexes.

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

22
23 **SEC. 1009.23. EXCEPTIONS.**

24 The following places shall not be subject to this Article:
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1 (a) ~~That portion of any hotel or motel lobby designated for smoking, provided that no hotel or~~
2 ~~motel shall designate more than 25 percent of any lobby for smoking, and provided further that no~~
3 ~~hotel or motel shall permit smoking in any room used for exhibit space;~~

4 (b) ~~Hotel and motel guest~~ Tourist lodging facility room accommodations designated as
5 smoking rooms, provided that ~~hotels and motels~~ tourist lodging facilities shall designate at least
6 75 percent of the guest rooms in tourist lodging facilities as smoke free. The tourist lodging facility
7 must permanently designate particular guest rooms as smoke free and ashtrays and matches are to be
8 permanently removed from such smoke free rooms. Permanent "no smoking" signage shall be affixed
9 in smoke free rooms. Where possible, designated smoke free rooms shall not be located on the same
10 floor as smoking rooms. It is recommended that smoking be relegated to the top floor with at least 50
11 percent of the rooms on the top floor designated as smoke free. 35 percent of the guest rooms as
12 nonsmoking;

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

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

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

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

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

23 (c) Bars and Taverns located in commercial buildings that submit to the Department
24 of Public Health within three months of the effective date of this ordinance an application and
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1 all documents required by the Department to demonstrate that the bar or tavern had no
2 employees as of December 31, 2007. If the Department of Public Health approves the
3 application, the bar or tavern may allow smoking on the premises but must reapply for this
4 exemption every subsequent year by January 31. This exemption status is nontransferable
5 and immediately expires if there is any change in the ownership interest(s) of the bar or
6 tavern, if the establishment hires employees, or if the business is no longer located in a
7 commercial building.

8 (d) Tobacco Shops that are located in commercial buildings as of December 31,
9 2007. To qualify for the exemption under this Section, the tobacco shop owner must submit
10 an application and all documents required by the Department of Public Health. If the
11 application is approved by the Department, the tobacco shop may allow smoking on the
12 premises. The exemption will continue for as long as the owner who owns the tobacco shop
13 as of December 31, 2007 continues to hold the same ownership interest in the tobacco shop
14 and the establishment continues to qualify as a tobacco shop. The tobacco shop must
15 reapply for this exemption every year by January 31. This exemption status is
16 nontransferable and immediately expires if there is any change in the ownership interest(s) of
17 the tobacco shop or if the tobacco shop is no longer located in a commercial building.

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19 ~~SEC. 1009.24. OPERATIVE DATE, INTERIM REGULATION, AND HARDSHIP EXEMPTION FOR~~
20 ~~RESTAURANTS.~~

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

23 ~~(b) Prior to January 1, 1995, smoking shall be prohibited in restaurants in lobbies, waiting~~
24 ~~areas, restrooms, and dining areas designated for nonsmoking. Unless the restaurant has been~~
25

1 ~~designated entirely nonsmoking, the owner, manager or operator of a restaurant shall allocate~~
2 ~~and designate by appropriate signage an adequate amount of space in these areas to meet the~~
3 ~~demands of both smokers and nonsmokers, and shall inform all patrons that nonsmoking areas~~
4 ~~are provided.~~

5 ~~(c) On or after January 1, 1995, any owner or manager of a restaurant may apply to the~~
6 ~~Controller for an exemption from or modification of the requirements of this Article based on~~
7 ~~significant financial hardship caused by compliance with this Article.~~

8 ~~(1) The applicant shall include all information required by the Controller. An~~
9 ~~application for exemption or modification shall be accompanied by a reasonable fee~~
10 ~~established by the Controller to cover the costs required to process the application and~~
11 ~~make a determination. The Controller shall give the Department of Public Health an~~
12 ~~opportunity to present relevant information with respect to each application.~~

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

21 ~~(3) The decision of the Controller may be appealed within 15 days of the issuance of~~
22 ~~the decision to the Board of Permit Appeals by the applicant or by any person who~~
23 ~~deems that his or her interests or that the general public interest will be adversely~~
24 ~~affected by the decision. The Board of Permit Appeals may concur in, overrule or modify~~
25

1 *the Controller's decision. The provisions of Sections 8 through 16 of Part III of the San*
2 *Francisco Municipal Code shall govern the appeal process.*

3 *(4) No exemptions or modifications shall be granted to any restaurant unless it has*
4 *been smokefree for at least one year. Notwithstanding any other provision of this Article,*
5 *any restaurant which has been granted an exemption or modification from the*
6 *requirements of this Article shall not permit smoking in more than 25 percent of the*
7 *seating or floor space of the restaurant.*

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

12
13 **SEC. 1009.25. VIOLATIONS AND PENALTIES.**

14 (a) ~~The presence of secondhand smoke from a business establishment as defined in~~
15 ~~Section 1009 located in a mixed-use residential and commercial building is a nuisance and a~~
16 ~~trespass and shall constitute a violation of this Article. Any private enforcement of this~~
17 ~~subsection must comply with the requirements of Section 1009.28.~~

18 (b) The Director of Public Health may enforce the provisions of this Article against
19 violations by serving notice requiring the correction of any violation within a reasonable time
20 specified by the Director. Upon the violator's failure to comply with the notice within the time
21 period specified, (1) the Director may request the City Attorney to maintain an action for
22 injunction to enforce the provisions of this Article and for assessment and recovery of a civil
23 penalty for such violation and (2) the owner of the premises or the person with the right to
24 possession and management of the property may maintain an action for injunctive relief to
25

1 enforce the provisions of this Article and an action for damages. Damages may be awarded
2 up to \$500 a day for each day the violation occurs or is permitted to continue. It is necessary
3 to specify the amount of such damages because of the extreme difficulty that the owner or
4 other authorized person would have in establishing injury based on lost business, lost
5 productivity due to health injuries caused by tobacco smoke, and other costs arising because
6 of the health problems created by smoking.

7 ~~(b)(e)~~ The Director also may enforce the provisions of this Article by serving a Notice of
8 Violation requesting a person to appear at an administrative hearing before the Director at least 20
9 days after the Notice of Violation is mailed. At the hearing, the person cited with violating the
10 provisions of this Article shall be provided an opportunity to refute all evidence against him or her.
11 The Director shall oversee the hearing and issue a ruling within 20 days of its conclusion. The
12 Director's ruling shall be final.

13 ~~(c)(d)(b)~~ Any person who violates or refuses to comply with the provisions of this
14 Article shall be liable for a civil *or administrative* penalty, not to exceed \$100 for the first
15 violation, \$200 for the second violation within one year, and \$500 for a third and each
16 subsequent violation within one year in the amounts set forth in Cal. Labor Code Sec. 6404.5
17 and for each day such violation is committed or permitted to continue, which *A civil* penalty
18 shall be assessed and recovered in a civil action brought in the name of the people of the City
19 and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any
20 penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid
21 to the Treasurer of the City and County of San Francisco. *An administrative penalty shall be*
22 *assessed following an administrative hearing as described in subsection (c).*

23 ~~(e) In addition to any other penalty or provision regarding enforcement set forth in this~~
24 ~~Article, any violation of the prohibition set forth in this article is a misdemeanor punishable by a fine~~
25

1 ~~not to exceed \$250 for a first violation, \$350 for a second violation within one year, and \$600 for a~~
2 ~~third and for each subsequent violation within one year.~~

3
4 **SEC. 1009.26. COST RECOVERY.**

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

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

15
16 **SEC. 1009.27. LIENS.**

17 (a) All final costs, fees, and administrative or civil penalties assessed against a person for
18 violations of this Article shall be an obligation owed to the City by the person found to have violated
19 State or local laws pertaining to smoking, and the owner of the property where the smoking occurred,
20 provided that both have been given adequate notice of the alleged violation(s). Such obligation may be
21 collected by means of the imposition of a lien against the property of the owner of the property or the
22 person or business against whom the final administrative or civil penalty was assessed. The City shall
23 mail to the owner of the property and to the person against whom the final amount was assessed (if
24 different from the owner of the property) a notice of the amounts due and a warning that lien
25

1 proceedings will be initiated against the property if the amounts are not paid within 30 days after
2 mailing of the notice.

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

5

6 ~~SEC. 1009.28. PRIVATE ENFORCEMENT.~~

7 ~~(a) Any The following persons acting for the interests of itself, its members, or the~~
8 ~~general public described in this Section (hereinafter "the Private Enforcer") may, upon prior~~
9 ~~notice to the party to be charged with a violation, bring a civil action to enforce this Article: 1) a~~
10 ~~residential tenant in a multi-unit housing complex where there is smoking in violation of this~~
11 ~~Article may sue a person who is violating this Article or permitting a guest to violate this~~
12 ~~Article; and 2) a person who owns or is employed by a business establishment that is subject~~
13 ~~to secondhand smoke from another business establishment or the common areas of the~~
14 ~~building, not including the outdoor areas, where smoking is prohibited under this Article may~~
15 ~~sue the person smoking or the person responsible under this Article for the smoking in the~~
16 ~~business establishment or the common area of the building. At least twenty days before filing~~
17 ~~a civil lawsuit, the Private Enforcer must communicate in writing to the individual who he or~~
18 ~~she believes has violated this Article and must include in that communication: 1) a specific~~
19 ~~description of the manner in which the Private Enforcer believes the Article has been violated;~~
20 ~~2) a statement notifying the recipient that he or she is in violation of this Article or other~~
21 ~~applicable law; and 3) the Private Enforcer's intent to file a lawsuit to enforce this Article if the~~
22 ~~violation is not cured by a date set forth in the writing. If the party to whom the writing is~~
23 ~~addressed fails to take reasonable measures to correct a violation of the ordinance, the~~

24

25

1 Private Enforcer may bring a civil action as described in this section. Upon proof of a violation,
2 a court shall award to the Private Enforcer the following:

3 ~~_____ (1) Damages in the amount of either:~~
4 ~~_____ (i) upon proof, actual damages; or,~~
5 ~~_____ (ii) with insufficient or no proof of damages, \$100 for each violation of this~~
6 ~~Article, up to a total of \$500 (hereinafter "Statutory Damages"). Unless otherwise specified in~~
7 ~~this Article, each day of a continuing violation shall constitute a separate violation.~~

8 Notwithstanding any other provision of this Article, no Private Enforcer shall recover Statutory
9 Damages based upon a violation of this Article if a previous claim brought on behalf of the
10 general public for Statutory Damages and based upon the same violation has been
11 adjudicated, whether or not the Private Enforcer was a party to that adjudication.

12 ~~_____ (2) Restitution of the gains obtained in violation of this Article.~~
13 ~~_____ (3) Exemplary damages, where it is proven by clear and convincing evidence~~
14 ~~that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the~~
15 ~~public health.~~

16 ~~(b) The Private Enforcer may also bring a civil action to enforce this Article by way of a~~
17 ~~conditional judgment or an injunction. Upon proof of a violation, a court shall issue a~~
18 ~~conditional judgment or an injunction.~~

19 ~~(c) Notwithstanding any legal or equitable bar against a Private Enforcer seeking relief~~
20 ~~on its own behalf, a Private Enforcer may bring an action to enforce this Article solely on~~
21 ~~behalf of the general public. When a Private Enforcer brings an action solely on behalf of the~~
22 ~~general public, nothing about such an action shall act to preclude or bar the Private Enforcer~~
23 ~~from bringing a subsequent action based upon the same facts but seeking relief on its own~~
24 ~~behalf.~~

25

1 ~~(d)(c) Nothing in this Section shall prohibit the Private Enforcer from bringing a civil~~
2 ~~action in small claims court to enforce this Article, so long as the amount in demand and the~~
3 ~~type of relief sought are within the jurisdictional requirements of small claims court as set forth~~
4 ~~in California Code of Civil Procedure section 116.220.~~

5 ~~(e)(d) Nothing in this Section shall excuse an owner, manager, or other person from~~
6 ~~complying with the requirements of this Article.~~

7
8 SEC. 1009.29. AUTHORITY TO ADOPT RULES AND REGULATIONS.

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

11
12 SEC. 1009.30. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL
13 WELFARE.

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

18
19 SEC. 1009.31. PREEMPTION.

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

1 **SEC. 1009.2933. SEVERABILITY.**

2 *If any of the provisions of this Article or the application thereof to any person or circumstance*
3 *is held invalid, the remainder of this Article, including the application of such part or provisions to*
4 *persons or circumstances other than those to which it is held invalid, shall not be affected thereby and*
5 *shall continue in full force and effect. To this end, the provisions of this Article are severable.*
6

7 **ARTICLE 19I: PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS**

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

9 (a) Smoking is prohibited on any unenclosed area of property in the City and County
10 of San Francisco that is open to the public and under the jurisdiction of the Recreation
11 and Park Commission or any other City department if the property is a park, square,
12 garden, sport or playing field, pier, or other property used for recreational purposes, or
13 a farmers market.

14 ~~(b) Nothing in this Section is intended to change the provisions of Health Code Section~~
15 ~~1009.22(b) regulating smoking in sport stadiums.~~

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

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

21 ~~(d)(e)~~ The provisions of this Article do not apply to playgrounds or tot lot sandbox
22 areas, in and around which smoking is prohibited by California Health and Safety Code
23 Section 104495.
24
25

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

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

4

5

6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

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9 By: _____
10 Cecilia T. Mangoba
11 Deputy City Attorney

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