

File No. 091443

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date February 1, 2010

Board of Supervisors Meeting

Date _____

Cmte Board

☐	☐	Motion
☐	☐	Resolution
☐	☐	Ordinance
☐	☐	Legislative Digest
☐	☐	Budget Analyst Report
☐	☐	Legislative Analyst Report
☐	☐	Youth Commission Report
☐	☐	Introduction Form (for hearings)
☐	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☐	☐	Contract/Agreement
☐	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Application
☐	☐	Public Correspondence

OTHER

(Use back side if additional space is needed)

☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____

Completed by: Alisa Somera Date January 28, 2010

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file and the online version.

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

Ordinance amending Articles 19F and 19G of the San Francisco Health Code by amending Sections 1009.20, 1009.21, 1009.22, 1009.23, 1009.25, and 1009.81, adding Sections 1009.26, 1009.27, 1009.29, 1009.30, 1009.31, and 1009.32, and repealing Section 1009.24, to update findings and prohibit smoking in: 1) business establishments and bars regardless of whether owner-operated, 2) common areas of multi-unit housing complexes, 3) tourist lodging facilities, 4) tobacco shops, 5) charity bingo games, 6) unenclosed dining areas of restaurants, 7) service waiting areas, 8) areas outside entrances, exits and operable windows and vents of all buildings except at the curb of the nearest street, sidewalk or alley, 9) farmers markets, and 10) vehicles owned by the City and County of San Francisco; establishing obligations for property owners and managers to prevent smoking in prohibited areas; adding administrative procedures and penalties; deleting criminal penalties; adding provisions for cost recovery and liens; and making conforming changes in the Health Code.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough-italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough-normal~~.

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

Section 1. The San Francisco Health Code is hereby amended by amending Sections 1009.20, 1009.21, 1009.22, 1009.23, 1009.25, and 1009.81, adding Sections 1009.26, 1009.27, 1009.29, 1009.30, 1009.31, and 1009.32, and repealing Section 1009.24, to read as follows:

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

3 **SEC. 1009.20. FINDINGS.**

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

6 (1) Smoking is the single greatest preventable cause of disease and death.

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

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

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

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

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

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

23 (8) Secondhand smoke contains many chemicals that can quickly irritate and
24 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.

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 (d)-(b) 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 smoke.~~

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

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

8 9 **SEC. 1009.21. DEFINITIONS.**

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

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

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

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

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

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

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

23 (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)(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)~~ "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 dwelling units.

18 ~~(j)~~ "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)(e) "Nonprofit establishment" means any facility used for social, recreational, health
6 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) "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 units,
14 and no business establishments.

15 (n) "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) "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.

1 ~~(p)(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 includes
4 separate rooms within restaurants, either accessible from the restaurant or an outside door, and
5 whether or not the room is used as a meeting room or banquet room or food or beverages are served in
6 the room. This term also includes the areas adjacent to and serving the meeting or banquet room.

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

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

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

1 includes all lobbies, offices and internal circulation to guest rooms and suites within the same enclosed
2 building or buildings as the guest rooms or suites.

3 (t) "Tobacco Shop" means any tobacco retailer whose principal or core business is selling
4 tobacco products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more
5 of floor area and display area is devoted to the sale or exchange of tobacco products, tobacco
6 paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of
7 tobacco products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions
8 include a tobacco product or tobacco paraphernalia. A "tobacco shop" cannot be located within or
9 adjacent to a restaurant, bar or tavern, either as a room accessible from the restaurant, bar or tavern
10 or from a separate entrance. In addition, a "tobacco shop" does not include an establishment where
11 customers use hookahs on the premises, either to smoke tobacco or any other weed or plant.

12
13 **SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES, CERTAIN**
14 **UNENCLOSED AREAS, CERTAIN VEHICLES, AND ENCLOSED STRUCTURES**
15 **CONTAINING CERTAIN USES AND CERTAIN SPORTS STADIUMS.**

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

20 (1) Facilities owned or leased by the City and County of San Francisco; every
21 commission, department or agency, with jurisdiction over such property shall adopt
22 regulations or policies implementing the provisions of this Article; provided, however, with
23 respect to facilities located outside the City and County of San Francisco, the regulations or
24 policies shall prohibit smoking in enclosed areas during ~~those~~ all ~~times that the public has access,~~

1 ~~except that (A) in any enclosed area a designated smoking area may be provided if it is physically~~
2 ~~separated from and no larger than the nonsmoking area, and (B) when the public does not have access~~
3 ~~to an enclosed area, the provisions of Article 19 apply;~~

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

6 (3) Polling places;

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

10 (5) Educational facilities;

11 (6) Business establishments;

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

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

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

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

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

23 (12) Convention facilities;

1 (13) Restaurants, except that smoking will be allowed in outdoor and sidewalk dining
2 areas of restaurants until sixth months after the effective date of this ordinance; subject to the
3 provisions of Section 1009.24.

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

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

7 (15) Tourist Lodging Facilities;

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

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

11 (18) Facilities used to conduct charity bingo games pursuant to Penal Code Section
12 326.5, during such times that persons are assembled in the facility in connection with such games; and.

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

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

17 ~~(b) No owner, manager, or operator of a sports stadium shall knowingly or intentionally~~
18 ~~permit, and no person on the premises shall engage in, the smoking of tobacco products in any~~
19 ~~enclosed or open space at a sports stadium. except in (1) concourses and ramps outside seating areas,~~
20 ~~(2) private suites and corridors to private suites, and (3) areas designated for parking. Any portion of a~~
21 ~~sports stadium used as a bar or restaurant shall be governed by the provisions of this Article regulating~~
22 ~~smoking in bars and restaurants. For purposes of this subsection, a sports stadium means a publicly~~
23 ~~owned facility which has a seating capacity of at least 30,000 people.~~

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

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

12 **(d)** Smoking outside entrances, exits and operable windows and vents of all buildings is only
13 permitted at the curb of the nearest street, sidewalk or alley. If there is no curb within fifteen feet of the
14 building, smoking is prohibited within fifteen feet of entrances, exits, and operable windows and vents
15 of any building.

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

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

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

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

20 (1) Posted clear and prominent "no smoking" signs in any area on the premises
21 where smoking is prohibited. Post clear and prominent signs at each entrance to the premises that
22 read "Smoking is prohibited outside this building except at the curb or at least 15 feet away from exits,
23 entrances, and operable windows." These signs must be written with letters of no less than one inch in
24 height and include 1) the international "No Smoking" symbol, consisting of a pictorial representation of
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1 a burning cigarette enclosed in a red circle, with a diameter of at least six inches, with a red bar across
2 it, and 2) a statement that smoking is in violation of San Francisco Health Code Article 19F.

3 (2) Requested, ~~when appropriate,~~ that ~~such any~~ person smoking in areas where
4 smoking is prohibited under this Article refrain from smoking. But this subsection does not require a
5 property owner or manager of a business to enforce the smoking prohibition in Section 1009.22(d)
6 outside a business by persons who are not patrons of the business, or a property owner or manager of a
7 multi-unit housing complex to enforce a smoking prohibition outside the building by persons who are
8 not tenants of the building.

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

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

16 (4) Remove any ashtrays from inside the premises. No persons, employer, business or
17 non profit entity shall knowingly or intentionally permit the presence or placement of ash receptacles
18 within an enclosed area where smoking is prohibited. Under Public Works Code Section 173(c), all
19 businesses must place ashtrays or other receptacles outside of all exits for the disposal of cigarettes,
20 cigars, and other similar combustible products used by employees and patrons who smoke. Ashtrays or
21 other such receptacles outside of premises should be placed at the curb or at least 15 feet away from
22 the entrance or exit of a building and at least 20 feet from a bus stop. If there is no location at the curb
23 or at least 15 feet away from a building entrance and at least 20 feet from a bus stop, the ashtray may
24 be affixed outside the entrance or exit with a sign with the following wording: "Smoking is only
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1 permitted at the curb." Businesses that have placed permanently affixed ashtrays or other such
2 receptacles outside their entrances or exits before the effective date of this ordinance shall post a sign
3 on the receptacle with the following wording: "Smoking is only permitted at the curb."

4 The duties described in Sections (1)-(4) of this Section are baseline requirements and are not
5 the only responsibilities of owners or managers to prevent smoking in multi-unit housing complexes.

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

8 **SEC. 1009.23. EXCEPTIONS.**

9 The following places shall not be subject to this Article:

10 ~~(a) That portion of any hotel or motel lobby designated for smoking, provided that no hotel or~~
11 ~~motel shall designate more than 25 percent of any lobby for smoking, and provided further that no~~
12 ~~hotel or motel shall permit smoking in any room used for exhibit space;~~

13 ~~(b) Hotel and motel guest~~ Tourist lodging facility room accommodations designated as
14 smoking rooms, provided that ~~hotels and motels~~ the owners or managers of tourist lodging facilities
15 shall designate at least 75 percent of the guest rooms in tourist lodging facilities as smoke free. The
16 owners or managers of tourist lodging facilities facility must permanently designate particular guest
17 rooms as smoke free and ashtrays and matches are to be permanently removed from such smoke free
18 rooms. Permanent "no smoking" signage shall be affixed in smoke free rooms. Where possible,
19 designated smoke free rooms shall not be located on the same floor as smoking rooms. It is
20 recommended that smoking be relegated to the top floor with at least 50 percent of the rooms on the top
21 floor designated as smoke free. 35 percent of the guest rooms as nonsmoking;

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

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

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

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

5 ~~(g) Any store that engages exclusively in the sale of tobacco and tobacco-related products and~~
6 ~~any portion of any store devoted exclusively to the sale of tobacco and tobacco-related products.~~

7 (c) Bars and Taverns located in commercial buildings that submit to the Department of
8 Public Health within three months of the effective date of this ordinance an application and all
9 documents required by the Department to demonstrate that the bar or tavern had no employees as of
10 December 31, 2009. If the Department of Public Health approves the application, the bar or tavern
11 may allow smoking on the premises but must reapply for this exemption every subsequent year by
12 January 31. This exemption status is nontransferable and immediately expires if there is any change in
13 the ownership interest(s) of the bar or tavern, if the establishment hires employees, or if the business is
14 no longer located in a commercial building.

15 (d) Tobacco Shops that are located in commercial buildings as of December 31, 2009. To
16 qualify for the exemption under this Section, the tobacco shop owner must submit an application and
17 all documents required by the Department of Public Health. If the application is approved by the
18 Department, the tobacco shop may allow smoking on the premises. The exemption will continue for as
19 long as the owner who owns the tobacco shop as of December 31, 2009 continues to hold the same
20 ownership interest in the tobacco shop and the establishment continues to qualify as a tobacco shop.
21 The tobacco shop must reapply for this exemption every year by January 31. This exemption status is
22 nontransferable and immediately expires if there is any change in the ownership interest(s) of the
23 tobacco shop or if the tobacco shop is no longer located in a commercial building.

1 ~~SEC. 1009.24. OPERATIVE DATE, INTERIM REGULATION, AND HARDSHIP EXEMPTION FOR~~
2 ~~RESTAURANTS.~~

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

5 ~~(b) Prior to January 1, 1995, smoking shall be prohibited in restaurants in lobbies, waiting~~
6 ~~areas, restrooms, and dining areas designated for nonsmoking. Unless the restaurant has been~~
7 ~~designated entirely nonsmoking, the owner, manager or operator of a restaurant shall allocate~~
8 ~~and designate by appropriate signage an adequate amount of space in these areas to meet the~~
9 ~~demands of both smokers and nonsmokers, and shall inform all patrons that nonsmoking areas~~
10 ~~are provided.~~

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

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

19 ~~(2) The applicant shall have the burden of proof in establishing that this Article has~~
20 ~~created an unreasonable economic effect on the applicant's business and threatens the~~
21 ~~survival of the restaurant, and that this economic effect is not the result of seasonal~~
22 ~~fluctuations or other conditions unrelated to the requirements of this Article. The~~
23 ~~Controller shall act on the application pursuant to administrative regulations adopted~~
24 ~~by the Controller. The Controller shall not be required to conduct a hearing on the~~
25

1 ~~application. The Controller shall issue a decision in writing to the applicant and to any~~
2 ~~other person who has requested a copy.~~

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

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

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

18 19 **SEC. 1009.25. VIOLATIONS AND PENALTIES.**

20 (a) The Director of Public Health may enforce the provisions of this Article against
21 ~~violators~~^{violations} by serving notice requiring the correction of any violation within a reasonable
22 time specified by the Director. Upon the violator's failure to comply with the notice within the
23 time period specified, (1) the Director may request the City Attorney to maintain an action for
24 injunction to enforce the provisions of this Article and for assessment and recovery of a civil
25

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

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

15 (c)(b) Any person who violates or refuses to comply with the provisions of this Article
16 shall be liable for a civil or administrative penalty in the amounts set forth in Cal. Labor Code Sec.
17 6404.5 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 or administrative action brought pursuant to this
21 Section shall be paid to the Treasurer of the City and County of San Francisco and credited to
22 the Department of Public Health Environmental Enforcement Fund. An administrative penalty shall be
23 assessed following an administrative hearing as described in subsection (b).

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

5
6 **SEC. 1009.26. COST RECOVERY.**

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

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

17
18 **SEC. 1009.27. LIENS.**

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

1 against the property if the amounts are not paid within 30 days after mailing of the notice.

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

4
5 **SEC. 1009.29. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

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

8
9 **SEC. 1009.30. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL**
10 **WELFARE.**

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

15
16 **SEC. 1009.31. PREEMPTION.**

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

21
22 **SEC. 1009. 33. SEVERABILITY.**

23 If any of the provisions of this Article or the application thereof to any person or circumstance
24 is held invalid, the remainder of this Article, including the application of such part or provisions to
25

1 persons or circumstances other than those to which it is held invalid, shall not be affected thereby and
2 shall continue in full force and effect. To this end, the provisions of this Article are severable.

3
4 **ARTICLE 19I: PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS**
5 **SEC. 1009.81. PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS.**

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

10 ~~(b) Nothing in this Section is intended to change the provisions of Health Code Section~~
11 ~~1009.22(b) regulating smoking in sport stadiums.~~

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

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

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

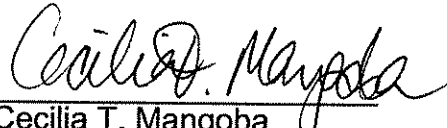
20 ~~(e)(f)~~ The provisions of this Article do not apply to piers primarily used for commercial
21 purposes.

22 ~~(g) [Reserved.]~~
23
24
25

1 APPROVED AS TO FORM:

2 DENNIS J. HERRERA, City Attorney

3
4 By:


Cecilia T. Mangoba
Deputy City Attorney

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Supervisor Mar
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

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

Ordinance amending Articles 19F and 19G of the San Francisco Health Code by amending Sections 1009.20, 1009.21, 1009.22, 1009.23, 1009.25, and 1009.81, adding Sections 1009.26, 1009.27, 1009.29, 1009.30, 1009.31, and 1009.32, and repealing Section 1009.24, to update findings and prohibit smoking in: 1) business establishments and bars regardless of whether owner-operated, 2) common areas of multi-unit housing complexes, 3) tourist lodging facilities, 4) tobacco shops, 5) charity bingo games, 6) unenclosed dining areas of restaurants, 7) service waiting areas, 8) areas outside entrances, exits and operable windows and vents of all buildings except at the curb of the nearest street, sidewalk or alley, 9) farmers markets, and 10) vehicles owned by the City and County of San Francisco; establishing obligations for property owners and managers to prevent smoking in prohibited areas; adding administrative procedures and penalties; deleting criminal penalties; adding provisions for cost recovery and liens; and making conforming changes in the Health Code.

Existing Law

The Health Code currently bans smoking in certain enclosed structures including, but not limited to, facilities owned or leased by the City, polling places, educational facilities, health facilities, and certain business establishments.

The smoking ban does not apply to owner-operated business establishments smaller than five hundred square feet.

The smoking ban does not apply to bars or the bar portion of a restaurant.

The smoking ban does not apply to tobacco shops or facilities used to conduct charity bingo games.

Smoking is not prohibited in outdoor dining areas.

It is not clear whether smoking is prohibited in the enclosed common areas of multi-unit housing complexes.

Smoking is prohibited in ticketing, boarding and waiting areas of public transit vehicles, including bus, train, trolley and cable car stops and shelters.

Smoking is prohibited on public transit vehicles.

State law prohibits smoking within twenty feet of the entrances of certain State and City owned and occupied buildings, but there is no such provision in local law.

A person who owns, operates, or manages property will not be deemed to have been in violation of the Health Code if he or she posts no smoking signs and requests, when appropriate, that a person refrain from smoking.

Section 1009.23 lists exceptions to the smoking ban, including but not limited to, the portion of a hotel or motel lobby designated for smoking, provided that no hotel or motel shall designate more than twenty-five percent of any lobby for smoking, facilities used to conduct charity bingo games, banquet rooms for use for private social functions, bars, and private homes.

Section 1009.25 includes civil penalties to be recovered in an action brought by the City Attorney's Office in the name of the people of the City and County of San Francisco, and misdemeanor penalties. There are no administrative penalties. There are criminal penalties.

There are no cost recovery or lien provisions for enforcement.

Article 19I prohibits smoking in certain unenclosed areas of property in the City and County of San Francisco that are open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier or other property used for recreational purposes.

Amendments to Current Law

The proposed ordinance would make the following changes to Health Code Article 19F.

The proposed ordinance would update the findings in Section 1009.20.

Section 1009.21 would: 1) clarify the definition for bar or tavern; 2) include in the business establishment definition those owner-operated businesses that are smaller than five hundred square feet; 3) include definitions for the terms commercial building, director, dwelling unit, enclosed, mixed-use building, multi-unit housing complex, residential building, residential hotel, residential hotel unit, tourist lodging facility, and tobacco shop.

Section 1009.22 would prohibit smoking in the following additional areas: bars and the bar portion of restaurants, tourist lodging facilities, homeless shelters, tobacco shops, facilities used to conduct charity bingo games, services areas, areas outside entrances, exits and operable windows and vents of buildings except at the curb of the nearest street, sidewalk or alley, areas within twenty feet of ticketing, boarding, and waiting areas of public transit stations, the enclosed common areas of multi-unit housing complexes (although smoking would be allowed in outdoor common areas ten feet or more from the doors and windows of these complexes), farmers markets, and all vehicles owned by the City and County of San Francisco.

Section 1009.22 would also require owners and managers of property to: 1) post clear and prominent no smoking signs, 2) request persons smoking in areas where smoking is prohibited to refrain from smoking, and 3) notify existing tenants of the smoking prohibitions contained in Health Code Article 19F.

Section 1009.23 would eliminate the exceptions to the smoking ban for certain portions of tourist lodging facilities, charity bingo games, banquet rooms used for private social functions, bars, and certain portions of multi-unit housing complexes. This section would also clarify that the dwelling units of multi-unit housing complexes and mixed-use buildings are considered private homes for purposes of the exception. This section also allows certain bars and taverns without employees and tobacco shops located in commercial buildings to allow smoking if they obtain an exemption from the Department of Public Health.

Section 1009.24 would be repealed, eliminating the hardship exemption for owners and managers of restaurants, and removing provisions no longer in effect as of January 1, 1995.

Section 1009.25 would lower penalty amounts to make them consistent with State law and add administrative enforcement provisions. Criminal penalties would be deleted.

Section 1009.26 and 1009.27 would add cost recovery and lien provisions.

Section 1009.29 gives the Director of Public Health the authority to adopt rules and regulations to implement and enforce the Article.

Section 1009.30 clarifies that in undertaking enforcement of the ordinance, the City is assuming an undertaking only to promote the general welfare and is not assuming an obligation for breach of which it would be liable in money damages.

Section 1009.31 clarifies that the City is not attempting to regulate in areas preempted by State or federal law.

Section 1009.33 adds a severability section so that if any of the provisions of the Article is held invalid, the remainder of the Article shall not be affected and shall continue in full force and effect.

This ordinance would make the following changes to Article 19I:

Section 1009.81 would add farmers markets to the list of unenclosed areas of property where smoking is prohibited.

Background Information

This ordinance expands the locations where smoking is prohibited in San Francisco. These amendments reflect the current understanding of the hazards of secondhand smoke, as reflected in the U.S. Surgeon General's 2006 Report on the Health Consequences of Involuntary Smoking, the January 2006 report of the California Air Resources, and the 2003

BOARD OF SUPERVISORS

Final Report on Tobacco Control Successes prepared by the Cancer Prevention and Control Program at the University of California, San Diego.