

**SEC. 1009.20.**  
**FINDINGS.**

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

- (1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.
- (2) The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.
- (3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental smoke.

(b) The Board of Supervisors finds and declares:

- (1) Nonsmokers have no adequate means to protect themselves from the damage inflicted upon them when they involuntarily inhale tobacco smoke.
- (2) Regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort, and environment of nonsmokers.

(c) It is, therefore, the intent of the Board of Supervisors, in enacting this Article, to protect the nonsmoker from environmental tobacco smoke and to eliminate smoking, as much as possible, in public places. (Added by Ord. 249-94, App. 7/7/94)

San Francisco Health Code

ARTICLE 19F PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS

SEC. 1009.21. DEFINITIONS.

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**SEC. 1009.21.  
DEFINITIONS.**

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

(a) "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

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

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

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

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

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

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

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

(g) "Restaurant" means every enclosed restaurant, coffee shop, cafeteria, cafe, luncheonette, sandwich stand, soda fountain, or other enclosed eating establishment serving food to the general public.

(h) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant;

(i) "Sports arena" means sports stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and similar places where the public assembles either to engage in physical exercise, participate in athletic competition or witness sports events. (Added by Ord. 249-94, App. 7/7/94)

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SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS AND ENCLOSED STRUCTURES CONTAINING CERTAIN USES AND CERTAIN SPORTS STADIUMS.

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**SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS AND ENCLOSED STRUCTURES CONTAINING CERTAIN USES AND CERTAIN SPORTS STADIUMS.**

(a) Smoking is prohibited in buildings and enclosed structures which contain any of the facilities or uses set forth below.

(1) Facilities owned or leased by the City and County of San Francisco; every commission, department or agency, with jurisdiction over such property shall adopt regulations or policies implementing the provisions of this Article; provided, however, with respect to facilities located outside the City and County of San Francisco, the regulations or policies shall prohibit smoking in enclosed areas during those times that the public has access, except that (A) in any enclosed area a designated smoking area may be provided if it is physically separated from and no larger than the nonsmoking area, and (B) when the public does not have access to an enclosed area, the provisions of Article 19 apply;

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

(3) Polling places;

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

(5) Educational facilities;

(6) Business establishments;

(7) Nonprofit establishments, except that persons qualifying under California Health Code Section 11362.5 to use medical marijuana may smoke medical marijuana on the premises of a nonprofit medical marijuana buyer's club;

(8) Aquariums, galleries, libraries and museums;

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

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

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

(12) Convention facilities;

(13) Restaurants, subject to the provisions of Section 1009.24.

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

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

(c) It is unlawful for any person to smoke in any area where this Article prohibits smoking. It is unlawful for the owner of any property, facility or establishment subject to this Article or, if a different person has the right to possession or management of such property, facility or establishment, for that person to permit any person to smoke in any area where smoking is prohibited by this Article.

(d) No person who owns, operates or manages property will be deemed to be in violation of the requirements of this Article with respect to persons smoking in such areas over whom they have no right of direction and control if they have taken the following reasonable steps to prevent smoking by such persons:

(1) Posted clear and prominent "no smoking" signs at each entrance to the premises;

(2) Requested, when appropriate, that such person refrain from smoking.

For purposes of this subsection, "reasonable steps" shall not include the physical ejection of a person from the premises. (Added by Ord. 249-94, App. 7/7/94; amended by Ord. 266-99, File No. 991462, App. 10/22/99)

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SEC. 1009.23. EXCEPTIONS.

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**SEC. 1009.23.  
EXCEPTIONS.**

The following places shall not be subject to this Article:

- (a) That portion of any hotel or motel lobby designated for smoking, provided that no hotel or motel shall designate more than 25 percent of any lobby for smoking, and provided further that no hotel or motel shall permit smoking in any room used for exhibit space;
- (b) Hotel and motel guest room accommodations designated as smoking rooms, provided that hotels and motels shall designate at least 35 percent of the guest rooms as nonsmoking;
- (c) Facilities used to conduct charity bingo games pursuant to Penal Code Section 326.5 during such times that persons are assembled in the facility in connection with such games;
- (d) Banquet rooms in use for private social functions;
- (e) Bars. If a restaurant contains a bar, smoking shall be permitted in that portion that constitutes the bar;
- (f) Private homes;
- (g) Any store that engages exclusively in the sale of tobacco and tobacco-related products and any portion of any store devoted exclusively to the sale of tobacco and tobacco-related products. (Added by Ord. 249- 94, App. 7/7/94)

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

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**SEC. 1009.24. OPERATIVE DATE, INTERIM REGULATION, AND HARDSHIP EXEMPTION FOR RESTAURANTS.**

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

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

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

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

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

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

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

(5) Exemptions granted by the Controller or the Board of Permit Appeals shall be valid for a period not to exceed 12 months and may be renewed upon application to the Controller. Applications for renewal shall be subject to the same requirements and procedures as initial applications. (Added by Ord. 249-94, App. 7/7/94)

**SEC. 1009.25. VIOLATIONS AND  
PENALTIES.**

(a) The Director of Public Health may enforce the provisions of this Article against violations by serving notice requiring the correction of any violation within a reasonable time specified by the Director. Upon the violator's failure to comply with the notice within the time period specified, (1) the Director may request the City Attorney to maintain an action for injunction to enforce the provisions of this Article and for assessment and recovery of a civil penalty for such violation and (2) the owner of the premises or the person with the right to possession and management of the property may maintain an action for injunctive relief to enforce the provisions of this Article and an action for damages. Damages may be awarded up to \$500 a day for each day the violation occurs or is permitted to continue. It is necessary to specify the amount of such damages because of the extreme difficulty that the owner or other authorized person would have in establishing injury based on lost business, lost productivity due to health injuries caused by tobacco smoke, and other costs arising because of the health problems created by smoking.

(b) Any person who violates or refuses to comply with the provisions of this Article shall be liable for a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco.

(c) In addition to any other penalty or provision regarding enforcement set forth in this Article, any violation of the prohibition set forth in this article is a misdemeanor punishable by a fine not to exceed \$250 for a first violation, \$350 for a second violation within one year, and \$600 for a third and for each subsequent violation within one year. (Added by Ord. 249-94, App. 7/7/94)

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SEC. 1009.26. DISCLAIMERS.

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**SEC. 1009.26.  
DISCLAIMERS.**

In adopting and undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 249-94, App. 7/7/94)

San Francisco Health Code

ARTICLE 19F PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS

SEC. 1009.27. RELATIONSHIP TO OTHER SMOKING RESTRICTIONS.

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**SEC. 1009.27. RELATIONSHIP TO OTHER SMOKING RESTRICTIONS.**

The provisions of this Article 19F are intended to supersede the smoking regulations set forth in Articles 19A, 19B, 19C and 19E. The provisions of Articles 19A, 19B, 19C and 19E are hereby suspended. Notwithstanding the above, if the provisions of this Article 19F are determined invalid in whole or substantial part for any reason, the provisions of Article 19A, 19B, 19C and 19E shall no longer be suspended and shall become immediately operative. Articles 19A, 19B, 19C, and 19E encompass Sections 1006, 1006.1, 1006.2, 1006.3, 1006.4, 1006.5, 1007, 1007.1, 1007.2, 1007.3, 1007.4, 1007.5, 1008, 1008.1, 1008.2, 1008.3, 1008.4, 1008.5, 1008.6, 1008.7, 1008.8, 1009.5, 1009.6, 1009.7, 1009.8, 1009.9, and 1009.10. The Clerk of the Board shall cause to be printed appropriate notations in the Health Code indicating that the provisions of Articles 19A, 19B, 19C and 19E are suspended, unless and until such time that these provisions become operative again. (Added by Ord. 249-94, App. 7/7/94)