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San Francisco Health Code

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

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SEC. 1009.20. FINDINGS.

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

- (1) Smoking is the single greatest preventable cause of disease and death.
- (2) Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic (cancer causing), including formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide.
- (3) Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their

children.

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

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

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

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

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

(9) Secondhand smoke is a cause of disease, including lung cancer, in healthy nonsmokers.

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

(11) Eliminating smoking in indoor spaces protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.

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

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

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

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

(4) According to the 2002-2004 California Student Tobacco Survey, 49 percent of

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

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

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

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

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

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

(d) The Board of Supervisors finds and declares:

(1) Nonsmokers have no adequate means to protect themselves from the damage inflicted upon them by secondhand smoke.

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

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

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

SEC. 1009.21. DEFINITIONS.

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

(a) "Bar" or "Tavern" means any business establishment primarily devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the

servicing of food is only incidental to the consumption of such beverages.

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

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

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

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

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

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

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

(h) "Enclosed" means: (1) any covered or partially covered space having more than 50 percent of its perimeter area walled in or otherwise closed to the outside such as a covered porch with more than two walls, or (2) any space open to the sky ("uncovered") having more than 75 percent of its perimeter area walled in or otherwise closed to the

outside such as a courtyard. Outdoor patios and historically compliant semi-enclosed smoking rooms shall not be considered enclosed.

(i) "Historically compliant semi-enclosed smoking room" means a room in a bar or tavern that: 1) has one side open to the outside; 2) has a depth no more than two times the height of the room at the opening to the outside; 3) has self-closing doors from the room to the rest of the establishment; 4) is not a source of mechanical ventilation for the building; and 5) existed and where smoking was allowed as of December 31, 2009 and has had no structural alterations since that date except as approved by the Director under Section 1009.23(d).

(j) "Mixed-use building" means a building with commercial and dwelling units.

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

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

(m) "Outdoor patio" means a side or rear outside area of a bar or tavern that has no walls or ceiling and is open air. Outdoor dining areas of restaurants are not considered outdoor patios when food is no longer served in the dining area, even if there is a bar located outside.

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

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

(p) "Residential hotel" has the same meaning as defined in Chapter 41 of the San Francisco Administrative Code, which is any building or structure that contains one or more residential hotel units as defined in (p), below, unless exempted by the Administrative

Code. Residential hotels are further defined and regulated in the Residential Hotel Unit Conversion and Demolition Ordinance, Chapter 41 of the San Francisco Administrative Code.

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

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

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

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

(u) "Tobacco shop" means any tobacco retailer whose principal or core business is selling tobacco products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of tobacco products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived from the sale or exchange of tobacco products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a tobacco product or tobacco paraphernalia. A "tobacco shop" cannot be located within or adjacent to a restaurant, bar or tavern, either as a room accessible from the restaurant, bar or tavern or from a separate entrance.

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

"tourist lodging facilities" includes all lobbies, offices and internal passageways to guest rooms and suites within the same enclosed building or buildings as the guest rooms or suites.

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

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

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

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

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

(3) Polling places;

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

(5) Educational facilities;

(6) Business establishments;

(7) Nonprofit establishments, except that persons qualifying under California Health and Safety Code Section 11362.7 et seq. to use medical marijuana may smoke medical marijuana on the premises of a Medical Cannabis Dispensary with a valid permit issued by the Department of Public Health under Article 33 of the Health Code;

(8) Aquariums, galleries, libraries and museums;

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

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

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

(12) Convention facilities;

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

(14) Bars and Taverns, except for historically compliant semi-enclosed smoking rooms, the portion of an outdoor patio at least ten feet away from the entry, exit or operable window of the bar or tavern, or as specified in Section 1009.23(c) or 1009.23(d);

(15) Tourist Lodging Facilities;

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

(17) Tobacco Shops, except as specified in Section 1009.23(e);

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

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

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

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

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

(e) Notwithstanding Police Code Section 121(d) or any other provision of law, smoking outside entrances, exits and operable windows and vents of all buildings is only permitted at the curb of the nearest street, sidewalk or alley. If there is no curb within fifteen feet of the building, smoking is prohibited within fifteen feet of entrances, exits, and operable windows and vents of any building.

(f) Smoking is prohibited in enclosed common areas of multi-unit housing complexes, as defined in Section 1009.21(k), including, but not limited to, private apartment buildings,

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

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

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

(i) Any person who owns, operates or manages property is required to take the following steps to prevent smoking on that property where it is prohibited under this Code:

(1) Post clear and prominent signs at each entrance to the premises no higher than 8 feet and no lower than 5 feet, and within 10 feet of the door or the most appropriate place for visibility from outside, that read "Smoking only 1) at the curb, or 2) if no curb, at least 15 ft. from entrances, exits, operable windows, and vents" in letters no less than one half inch in height and include 1) the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a circle, with a diameter of at least three inches, with a bar across it, and 2) a statement at the bottom of the sign that reads "SF Health Code Article 19F" in font no less than inch in height. Persons that own, manage, or operate property that is LEED ("Leadership in Energy and Environmental Design") certified that has a smoking distance requirement greater than that specified in this ordinance shall post signs conforming to all the requirements in this Section that state that smoking only is allowed at that greater distance from the exists, entrances, and operable windows.

(2) Post clear and prominent "no smoking" signs in any area on the premises where smoking is prohibited. For multi-unit housing complexes, the signs need only be posted in

the common building lobby, common mailbox area, or common elevator.

(3) Request that any person smoking in areas where smoking is prohibited under this Article refrain from smoking. But this subsection does not require a property owner or manager of a multi-unit housing complex of less than 16 units to make the request that a person refrain from smoking unless the owner or manager observes the person smoking in areas where smoking is prohibited under this Article, nor does this subsection require a property owner or manager of a business to enforce the smoking prohibition in Section 1009.22(d) outside a business by persons who are not patrons of the business, or a property owner or manager of a multi-unit housing complex to enforce a smoking prohibition outside the building by persons who are not tenants of the building.

Upon receipt of a written complaint from a tenant or the Department of Public Health or when any person is observed smoking where smoking is prohibited, an owner or manager of a multi-unit housing complex must post a notice in the building lobby, common mailbox area, or common elevator for a period of not less than ten days, advising that a tenant has been observed smoking in a portion of the building where smoking is prohibited under San Francisco Health Code Article 19F, and requesting that all tenants refrain from smoking in those areas. If there is no common building lobby, common mailbox area or common elevator, then the owner may provide notice to tenants in another reasonable manner. If the owner knows the identity of the tenant who was smoking in a prohibited area, the owner must additionally make the request to the tenant in writing, and keep a record of the request for a reasonable period of time. For purposes of this subsection, a request that someone refrain from smoking does not require the physical ejection of a person from the premises.

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

(5) Remove any ashtrays from inside the premises. No persons, employer, business or non profit entity shall knowingly or intentionally permit the presence or placement of ash receptacles within an enclosed area where smoking is prohibited.

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

(j) Violation of any part of this Article is not grounds for eviction of residential tenants.

(k) If the owner or manager has complied with all the requirements in this Article, smoking in a multi-unit housing complex where prohibited under this Article shall not be considered a substantial reduction in housing services that would qualify a tenant for a reduction in rent under San Francisco Administrative Code Chapter 37.

(Added by Ord. 249-94, App. 7/7/94; amended by Ord. 266-99, File No. 991462, App. 10/22/99; Ord. 68-06, File No. 051669, App. 4/20/2006; Ord. 312-08, File No. 081009, App. 12/19/2008; Ord. 58-10, File No. 091443, App. 3/25/2010; Ord. 192-10, File No. 100671, App. 7/29/2010)

SEC. 1009.23. EXCEPTIONS.

The following places shall not be subject to this Article:

(a) Tourist lodging facility room accommodations designated as smoking rooms, provided that the owners or managers of tourist lodging facilities shall designate at least 75 percent of the guest rooms in tourist lodging facilities as smoke free. The owners or managers of tourist lodging facilities must permanently designate particular guest rooms as smoke free and ashtrays and matches are to be permanently removed from such smoke free rooms. "No smoking" signage shall be displayed in smoke free rooms. Where possible, designated smoke free rooms shall not be located on the same floor as smoking rooms. It is recommended that smoking be relegated to the top floor with at least 50 percent of the rooms on the top floor designated as smoke free. Owners and managers of tourist lodging facilities may designate 100% of guest rooms as smoke free; if such 100% smoke free designation is made, "no smoking" signage shall only be required in the common areas on each floor of such tourist lodging facilities.

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

(c) Bars and Taverns located in commercial buildings that submit to the Director within three months of the effective date of this ordinance an application and all documents required by the Director to demonstrate that the bar or tavern had no employees as of December 31, 2009. If the Director approves the application under the criteria of this subsection, the bar or tavern may allow smoking on the premises but must immediately 1) notify the Director if the establishment hires any employees, and 2) submit all documents to the Director verifying eligibility for this exemption upon request. The exemption will continue for as long as the establishment has no employees and the building where the bar or tavern is located continues to be commercial. Bars and Taverns located in mixed-use buildings that 1) have no employees as of December 31, 2009, and 2) relocate to a commercial building within two years of the effective date of this ordinance may allow smoking in their establishment after relocation to a commercial building if they submit to the Director within three months of the effective date of this ordinance an application and all documents required by the Director to demonstrate that the bar or tavern had no employees as of December 31, 2009. The application must also document that the Bar or Tavern will be located in a commercial building within two years of the effective date of this ordinance. This exemption status immediately expires if the establishment hires employees, or is no longer located in a commercial building.

(d) Bars and Taverns located in commercial buildings that submit to the Director within three months of the effective date of this ordinance an application and all documents required by the Director to demonstrate that an area in the establishment is a historically compliant semi-enclosed smoking room and qualified as such as of December 31, 2009. If the Director denies the application because the Bar or Tavern does not comply with the above requirements, the Director may allow the establishments to make alterations to comply with this requirement; if the Bar or Tavern completes the alterations to the Director's satisfaction, the Director may approve the application. If the Director approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in the historically compliant semi-enclosed smoking room. This exemption status is

nontransferable and immediately expires if 1) there is a change in the ownership interest(s) of the Bar or Tavern, 2) the room no longer meets the definition of historically compliant semi-enclosed smoking room, 3) there are structural alterations made to the smoking room after December 31, 2009 not approved by the Director, or 4) the establishment is no longer located in a commercial building. If the Director approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in the historically compliant semi-enclosed smoking room but must immediately notify the Director of any changes that would disqualify the establishment from this exemption. For purposes of this subsection, the term "change in ownership interest(s)" means the aggregate change of 50 percent or more of the ownership of the business within a 12-month period.

(e) Tobacco Shops that are located in commercial buildings as of December 31, 2009. To qualify for the exemption under this Section, the tobacco shop owner must submit an application and all documents required by the Director. If the Director approves the application, the tobacco shop may allow smoking on the premises. The exemption will continue for as long as the establishment continues to qualify as a tobacco shop and the building where the tobacco shop is located continues to be commercial. The tobacco shop must immediately notify the Director of any change that would disqualify the retailer from this exemption and submit all documents to the Director verifying eligibility upon request.

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

SEC. 1009.24. RESERVED.

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

SEC. 1009.25. VIOLATIONS AND PENALTIES.

(a) **Civil Enforcement.** The Director of Public Health may enforce the provisions of this Article against violators by serving notice requiring the correction of any violation within a reasonable time specified by the Director. Upon the violator's failure to comply with the notice within the time period specified, (1) the Director may request the City Attorney to maintain an action for injunction to enforce the provisions of this Article and for assessment and recovery of a civil penalty for such violation and (2) the owner of the premises or the person with the right to possession and management of the property may maintain an action for injunctive relief to enforce the provisions of this Article and an action for damages. Damages may be awarded up to \$500 a day for each day the violation occurs or is permitted to continue. It is necessary to specify the amount of such damages because of the extreme difficulty that the owner or other authorized person would have in establishing injury based on lost business, lost productivity due to health injuries caused by tobacco smoke, and other costs arising because of the health problems created by smoking. Any civil penalties collected under this Article shall be credited to the Public Health Environmental Health Code Compliance Fund, authorized by San Francisco Administrative Code Section 10.100-193.

(b) **Administrative Enforcement.** The Director also may enforce the provisions of this Article by:

(1) Serving a Notice of Violation requesting a person to appear at an administrative hearing before the Director at least 20 days after the Notice of Violation is mailed. At the hearing, the person cited with violating the provisions of this Article shall be provided an opportunity to refute all evidence against him or her. The Director shall oversee the hearing and issue a ruling within 20 days of its conclusion. The Director's ruling shall be final; or,

(2) Issuing a citation under San Francisco Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," which is hereby incorporated in its entirety and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Article, and any rule or regulation adopted pursuant to this Article, in addition to the other enforcement mechanisms authorized by this Article, provided, however, that:

(i) Each day a violation is committed or permitted to continue shall constitute a separate violation;

(ii) The Director of Public Health shall appoint the hearing officer to conduct hearings for appeals;

(iii) The fine for any violation issued pursuant to this section shall be paid to the Treasurer of the City and County of San Francisco and credited to the Public Health Environmental Health Code Compliance Fund, authorized by San Francisco Administrative Code Section 10.100-193;

(iv) The Director may recover any costs and fees, including but not limited to attorneys' fees, for enforcement initiated through this Section and authorized under this Article; and,

(v) The penalty amounts for citations issued under Administrative Code Chapter 100 shall be the same as those set forth in subsection (c).

(c) Any person who violates or refuses to comply with the provisions of this Article shall be liable for a civil or administrative penalty in the amounts set forth in Cal. Labor Code Sec. 6404.5 for each day such violation is committed or permitted to continue. A civil penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil or administrative action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco and credited to the Public Health Environmental Health Code Compliance Fund. An administrative penalty shall be assessed following an administrative hearing as described in subsection (b).

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

SEC. 1009.26. COST RECOVERY.

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

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

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

SEC. 1009.27. LIENS.

(a) All final costs, fees, and administrative or civil penalties assessed against a person for violations of this Article shall be an obligation owed to the City by the person found to have violated State or local laws pertaining to smoking. Such obligation may be collected by means of the imposition of a lien against the property of the person or business against whom the final administrative or civil penalty was assessed, provided the violation occurred on that property. The City shall mail to the owner of the property a notice of the amounts due and a warning that lien proceedings will be initiated against the property if the amounts are not paid within 30 days after mailing of the notice.

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

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

SEC. 1009.29. AUTHORITY TO ADOPT RULES AND REGULATIONS.

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

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

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

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

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

SEC. 1009.31. PREEMPTION.

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed or expressly authorized by federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by federal or state law. It is the intent of the Board of Supervisors that the provisions of this Article not be enforced in circumstances where duplicative state law already regulates smoking. Rather it is the Board's intention that this Article be enforced as to all business establishments to the fullest extent that state law does not regulate them.

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

SEC. 1009.33. SEVERABILITY.

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

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

SEC. 1009.55. DISCLAIMERS.

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

(Added by Ord. 249-94, App. 7/7/94)

SEC. 1009.37. RELATIONSHIP TO OTHER SMOKING RESTRICTIONS.

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

19E are suspended, unless and until such time that these provisions become operative again.

(Added by Ord. 249-94, App. 7/7/94)

ARTICLE 19H: PERMITS FOR THE SALE OF TOBACCO

- Sec. 19H.1. Findings.
- Sec. 19H.2. Definitions.
- Sec. 19H.3. Requirement for Tobacco Sales Permit.
- Sec. 19H.4. Application Procedure: Inspection of Premises; Issuance and Display of Permit.
- Sec. 19H.5. Density Cap.
- Sec. 19H.6. Exceptions for Certain New Permits.
- Sec. 19H.7. Permit and Annual License Fees.
- Sec. 19H.8. Permit may not be Transferred to New Persons or Locations.
- Sec. 19H.9. Enforcement and Inspection.
- Sec. 19H.10. Conduct Violating Health Code Article 19D (Regulating Cigarette Vending Machines).
- Sec. 19H.11. Conduct Violating Police Code Section 4600.3 (Regulating the Self-Service Merchandising of Tobacco Products).
- Sec. 19H.12. Conduct Violating Health Code Article 19F (Prohibiting Smoking in Enclosed Areas and Sports Stadiums).
- Sec. 19H.13. Conduct Violating Tobacco Control Laws.
- Sec. 19H.14. Conduct Violating California Penal Code Section 308 (Prohibiting the Sale of Tobacco to Minors).
- Sec. 19H.15. Conduct Violating California Labor Code Section 6404.5 (Prohibiting Smoking in Enclosed Places of Employment).
- Sec. 19H.16. Fraudulent Permit Applications.
- Sec. 19H.17. Selling Tobacco without a Permit.
- Sec. 19H.18. Other Enforcement.
- Sec. 19H.19. Time Period of Suspension of Permit.
- Sec. 19H.20. Administrative Penalty.
- Sec. 19H.21. Notice of Correction.
- Sec. 19H.22. Notice of Initial Determination.
- Sec. 19H.23. Payment of Administrative Penalties.
- Sec. 19H.24. Appeals to Board of Appeals.

- Sec. 19H.25. Other Remedies.
- Sec. 19H.26. Authority to Adopt Rules and Regulations.
- Sec. 19H.27. City Undertaking Limited to Promotion of the General Welfare.
- Sec. 19H.28. Preemption.
- Sec. 19H.29. Severability.

SEC. 19H.1. FINDINGS.

The Board of Supervisors of the City and County of San Francisco hereby finds and declares as follows:

(a) Tobacco is the leading cause of preventable death in the United States and kills nearly 6 million people each year globally (World Health Organization 2013). According to the Centers for Disease Control and Prevention (CDC), more than 400,000 deaths in the United States each year are attributable to tobacco use, including one-third of all cancer deaths.

(b) In addition to the obvious adverse health impact, tobacco related death and disease have an adverse economic impact. The CDC reports that tobacco use costs the United States billions of dollars each year.

(c) State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors. (California Penal Code section 308.) State law also prohibits public school students from smoking or using tobacco products while on campus, attending school-sponsored activities, or under the supervision or control of school district employees. (California Education Code section 48901(a).) In addition, state law prohibits smoking in enclosed places of employment (California Labor Code section 6404.5). Moreover, San Francisco has adopted ordinances that ban cigarette vending machines in the City (Health Code Article 19D), prohibit pharmacy sales of Tobacco Products (Health Code Article 19J), prohibit the self-service merchandising of Tobacco Products, except in places to which access by minors is prohibited by law (Police Code Section 4600.3), prohibit smoking in enclosed areas and sports stadiums (Health Code Article 19F) and prohibit the use of electronic cigarettes where smoking is not allowed (Health Code Article 19N).

(d) Despite these state and local restrictions, minors continue to obtain cigarettes and other Tobacco Products at alarming rates. 36.8% of California youth have smoked an entire cigarette by age 14 according to a 2012 survey conducted by the California Department of Public Health. The former United States Surgeon General Regina Benjamin at a February 2014 summit emphasized that the key factor in the fight against tobacco is preventing minors from becoming smokers. She noted, "for every smoker who dies, there are two so-called replacement smokers trying a cigarette for the first time and getting hooked."

(e) Although it is unlawful to sell Tobacco Products and/or tobacco paraphernalia to minors, in a 2013 California youth buying survey, 7.6% of retailers surveyed unlawfully sold Tobacco Products to minors. These percentages are more concerning locally. San Francisco's Tobacco Sales to minors were reported to be 13.4% of retailers in 2012. Notably, sales in the City to minors are well above the 2012 statewide sales rate of 8.7%. More aggressive policies are needed to keep San Francisco's youth from gaining access to Tobacco Products.

(f) There are approximately 1,001 outlets in San Francisco that are licensed to sell tobacco, that is about 1 retailer for every 111 youth in the community compared to California generally where there are approximately 36,700 licensed tobacco retail stores in California – one for every 254 youth.

(g) San Francisco has a substantial interest in promoting compliance with State laws prohibiting sales of cigarettes and Tobacco Products to minors, in promoting compliance with laws intended to discourage the purchase of Tobacco Products by minors, and in protecting our children from illegally obtained tobacco.

(h) Social norms about smoking influence smoking rates, particularly among those not addicted. Studies have found that strong governmental regulation of smoking corresponds with and may contribute to anti-smoking norms. Social unacceptability has been repeatedly shown to be an important influence on both smoking rates and anti-smoking norms. Children and young people are particularly influenced by cues suggesting smoking is acceptable.

(i) Empirical research connects lower densities of retail outlets with lower consumption of tobacco, particularly among youth. Higher tobacco retail density encourages smoking by making cigarettes more accessible and available, by normalizing tobacco use, and through increasing environmental cues to smoke. Research focused on California has found a higher prevalence of current smoking and experimental smoking among students at schools in areas with a higher density of tobacco outlets. Prevalence of smoking was higher among students at schools in neighborhoods with five or more stores that sell tobacco than among students at schools in neighborhoods without any stores that sell tobacco.

(j) California communities in lower socioeconomic areas with a higher concentration of convenience stores have significantly higher rates of smoking. Residents of these neighborhoods are more at risk for tobacco related disease and death. Likewise, San Francisco's most disadvantaged neighborhoods are disproportionately impacted by high tobacco retail density. The six supervisorial districts with the highest proportions of tobacco retail sales by population (Districts 3, 5, 6, 9, 10, and 11) also have the lowest median household incomes in the City. District Six, with a median household income of \$38,610, has 270 tobacco permits while District Two, with a median household income of \$102,457, has only 51 tobacco permits. African American and Latino residents are more likely to live in districts with the highest number of tobacco retail outlets.

(k) As the tobacco related public health crisis affects all supervisorial districts in San Francisco, it is in the City's interest to reduce the disproportionate exposure to tobacco

outlets that exists among supervisorial districts and to minimize exposure in all supervisorial districts by limiting the number of new tobacco permits issued. District Seven currently has the lowest number (37) of tobacco permitted retailers in San Francisco. Setting a cap slightly above the District Seven density of permitted tobacco retailers as the maximum for each supervisorial district will begin to address the disparity of exposure to tobacco outlets among supervisorial districts and reduce the density of tobacco vendors overall.

(l) San Franciscans support limiting and reducing the number of permits for the sale of tobacco. In a 2012 representative survey of over 220 San Francisco residents, 88.5% felt that too many stores selling cigarettes is bad for community health; almost 74% would support a law that very gradually reduces the number of stores selling cigarettes and Tobacco Products given that the highest density of these is in low income neighborhoods; and 87% would support a policy that would reduce the amount of Tobacco Products available.

(m) Restaurants, and other non-traditional tobacco retailers in California are more likely to sell tobacco to minors than other retailers. 13.1% percent of restaurants and other nontraditional retailers sold tobacco to minors compared to 8.7% of all other California retailers.

(n) Young adult Bar patrons in one California study reported a current smoking rate of 47 percent, nearly four times the 2010 state rate of smoking prevalence for young adults.

(o) Social environments such as Bars and clubs are important venues for public health efforts to address young adult smoking.

(p) This Article 19H is designed to promote the public interest in ensuring that San Francisco businesses operate in compliance with applicable laws regulating tobacco, including laws prohibiting the sale of tobacco to minors and laws regulating smoking.

(Added as Sec. 1009.50 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.2. DEFINITIONS.

The following words and phrases, whenever used in this Article, shall be construed as defined in this section. Words in the singular include the plural and words in the plural include the singular. Words in the present tense include the future.

"Application" means the application submitted under Section 19H.4 for a Tobacco Sales permit allowing the person or business to engage in the sale of tobacco products at an Establishment.

"Bar" means an area, whether a separate, stand-alone business or part of a larger business which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages.

"Cap" means the figure set forth in Section 19H.5 and represents the total number of permitted Establishments that may operate in each supervisorial district.

"Change of Ownership" means a change of 50 percent or more of the ownership of the business within a 12-month period; provided, however, that if the Permittee is a corporation, transfer of 25 percent of the stock ownership of the permittee shall be deemed to be a Change of Ownership.

"Density Cap" has the same meaning as "Cap."

"Department" means the Department of Public Health.

"Director" means the Director of Health or his or her designee.

"District Population" means the population reported by the Department of Elections in each of the 11 supervisorial districts as required by Charter Section 13.110.

"Establishment" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items.

"Permittee" means a person who has obtained a Tobacco Sales permit for a specific location pursuant to this Article.

"Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

"Restaurant" means a business that primarily stores, packages, serves, vends, or otherwise prepares food for human consumption on the premises. "Restaurant" includes, but is not limited to businesses primarily engaged in providing (1) food services to patrons who order and are served while seated on the premises, and pay after eating, and (2) food services where patrons generally order and pay before eating on the premises.

"Restaurant" also includes separately owned food facilities that are located in a grocery store but does not include the grocery store.

"School" means a public or private kindergarten, elementary, middle, junior high or high school, or a school combining some or all of the above school grades.

"Tobacco Products" means tobacco and any substance containing tobacco leaf, including but not limited to cigarettes, electronic cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco, including the cigarettes commonly known as bidis.

"Tobacco Sales" means sales, or any offer to sell or exchange, for any form of consideration, Tobacco Products to any person by any person who operates an Establishment. "Tobacco Sales" includes any display of Tobacco Products.

"Tobacco Shop" means any tobacco retailer whose principal business is selling Tobacco Products, tobacco paraphernalia, or both, as evidenced by any of the following: 50% or more of floor area and display area is devoted to the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; 70% or more of gross sales receipts are derived

from the sale or exchange of Tobacco Products, tobacco paraphernalia, or both; or 50% or more of completed sales transactions include a Tobacco Product or tobacco paraphernalia.

(Added as Sec. 1009.51 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.3. REQUIREMENT FOR TOBACCO SALES PERMIT.

It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, in any establishment without first obtaining and maintaining a valid tobacco sales permit from the Department for each location where tobacco sales are conducted. Nothing in this Article shall be construed to grant any person obtaining and maintaining a tobacco sales permit any status or right other than the right to act as a tobacco retailer at the location identified on the face of the permit. The obtaining of a permit does not in and of itself transform a business into a retail tobacco or wholesale shop within the meaning of California Labor Code section 6404.5. It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, at an establishment for which the Director has suspended the tobacco sales while the period of suspension remains in effect. It shall be unlawful for any person to engage in or allow tobacco sales at an establishment for which the Director has revoked the tobacco sales permit for three years from the date of revocation. Permits are valid as long as the annual license fees are paid.

(Added as Sec. 1009.52 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.4. APPLICATION PROCEDURE: INSPECTION OF PREMISES; ISSUANCE AND DISPLAY OF PERMIT.

(a) **Application.** An Application for a Tobacco Sales permit shall be submitted in the name of the person(s) proposing to engage in the sale of Tobacco Products and shall be signed by each person or an authorized agent thereof. The Application shall be accompanied by the appropriate fees as described in Section 35 of the Business and Tax Regulations Code and such fees shall include any required inspections or other work performed by the Planning Department as required by the referral of the application. A separate Application is required for each location where Tobacco Sales are to be conducted. All Applications shall be submitted on a form supplied by the Department and shall contain the following information:

1. The name, address, e-mail address, and telephone number of the Applicant;
2. The Establishment name, address, e-mail address, and telephone number for each location for which a Tobacco Sales permit is sought;
3. Such other information as the Director deems appropriate, including the Applicant's type of business, and whether the Applicant has previously been issued a permit under this Article that is, or was at any time, suspended or revoked. No permit shall be issued if the Application is incomplete or inaccurate.

(b) **Inspection by Director.** Upon receipt of a completed Application and fees, the Director may inspect the location at which Tobacco Sales are to be permitted. The Director may also ask the Applicant to provide additional information that is reasonably related to the determination whether a permit may issue.

(c) **Referral to the Planning Department.** The Director will then refer Applications requiring inspection as to proximity to Schools and existing Establishments to the Planning Department. The Planning Department upon referral shall analyze the Application against the most recent data provided by the Department to determine whether the Applicant's location will comply with subsections (f)(3) and (f)(4) and whether the location qualifies as a Tobacco Shop.

(d) **Issuance of Permit.** If the Director is satisfied that the Applicant has met the requirements of this Article and that issuance of the permit will not violate any law, the Department shall issue the permit. An Establishment may not sell Tobacco Products until the permit is issued.

(e) **Display of Permit.** Each permittee shall display the permit prominently at each location where Tobacco Sales occur. No permit that has been suspended shall be displayed during the period of suspension. A permit that has been revoked is void and may not be displayed.

(f) **Grounds for Denial.**

(1) No new permit shall be issued if the Director finds that the Applicant is in violation of Health Code Article 19; Police Code Section 4600.3 (regulating the self-service merchandising of tobacco products), or the California Labor Code.

(2) No new permit shall be issued if the Applicant does not have a valid current Tobacco Retail Permit from the State Board of Equalization where the Applicant is required to have the State Board of Equalization permit except for businesses selling only electronic cigarettes.

(3) No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a School as measured by a straight line from the nearest point of the property line on which a School is located to the nearest point of the property line on which the Applicant's Establishment will be located.

(4) No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing Establishment as measured by a straight line from the nearest point of the property line on which the Applicant's Establishment will be located to the nearest point of the property line of the existing Establishment.

(5) No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits.

(6) No new permit shall be issued to any Applicant whose main purpose is offering food or alcoholic beverages for sale for consumption on the premises, including Bars and

Restaurants.

(7) No new permit shall be issued to any Applicant for operation of a Tobacco Shop.

(8) No new permit shall be issued for a location not previously occupied by a permitted Establishment.

(g) **Pending Applications.** Applications that have been submitted to the Director for approval as of December 9, 2014 shall not be subject to the Section 19H.4(f)(2)-19H.4(f)(8) and Section 19H.5.

(Added as Sec. 1009.53 by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 194-08, File No. 080594, App. 8/7/2008; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.5. DENSITY CAP.

(a) The Density Cap shall be forty-five (45) permitted Tobacco Sales Establishments in a supervisorial district. The Department shall assess the Density Cap every two years to evaluate whether to recommend to the Board of Supervisors an amendment to this Article to change the number of permitted Establishments as reasonably necessary to advance the public health purposes this Article seeks to achieve. The City may not issue a new permit in any supervisorial district that is at or above the Density Cap at the time of submission of the Application.

(b) Pursuant to its authority under Section 19H.26 to adopt rules, the Department may adopt rules governing the approval process for application submitted in a supervisorial district where the number of permits has fallen below the cap, including rules on the timing for the approval process.

(Added by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.6. EXCEPTIONS FOR CERTAIN NEW PERMITS.

Notwithstanding Section 19H.5 and Sections 19H.4(f)(3), (4), (5) and (7):

(a) If an owner of a retail food store establishment as defined in the Planning Code or Tobacco Shop who holds a Tobacco Sales permit and has been in business for five years as of the effective date of this Section 19H.6, submits an affidavit to the Director that attests to ownership of the business at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit and that also states that the owner is in negotiations with a specific buyer for the retail food store establishment or Tobacco Shop at that location, then that buyer ("new buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the new buyer for the retail food store establishment or Tobacco Shop at that location, on a one-time basis.

(b) If the new buyer submits an affidavit to the Director, stating that the new buyer has been in business continuously as a retail food store establishment or Tobacco Shop at that same location under the Tobacco Sales permit obtained in accordance with subsection (a)

and also states that the new buyer has held the permit for at least 10 years, then a subsequent buyer of the retail food store establishment or Tobacco Shop at that location ("subsequent buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the subsequent buyer for the retail food store establishment or Tobacco Shop on a one-time basis.

(c) Where the owner of a retail food store establishment or Tobacco Shop that holds a Tobacco Sales permit as of the effective date of this Section 19H.6, a child of the owner may apply for, and the Director may issue, a Tobacco Sales permit to the child for that retail food store establishment or Tobacco Shop at that location.

(d) An owner of a retail food store establishment or Tobacco Shop holding a Tobacco Sales permit as of the effective date of this Section 19H.6, who must relocate under Chapter 34B of the Building Code may apply for, and the Director may issue, a new Tobacco Sales permit for the location of the owner's retail food store establishment or Tobacco Shop.

(e) An owner of a Bar or Tavern (cigar or smoking bar) who qualified for an exemption under Section 1009.23(d) of this Code who holds a Tobacco Sales permit and has been in business for five years as of the effective date of this Section 19H.6, who submits an affidavit to the Director that attests to ownership of the business at the same location and under the same Tobacco Sales permit for five consecutive years immediately preceding submission of the affidavit and that also states that the owner is in negotiations with a specific buyer for the Cigar or Smoking Bar at that location, then that buyer ("new buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the new buyer for the Cigar or Smoking Bar at that location, on a one-time basis.

(f) If the new buyer submits an affidavit to the Director, stating that the new buyer has been in business continuously as a Cigar or Smoking Bar at that same location under the Tobacco Sales permit obtained in accordance with subsection (a) and also states that the new buyer has held the permit for at least 10 years, then a subsequent buyer of the Cigar or Smoking Bar at that location ("subsequent buyer") may apply for, and the Director may issue, a Tobacco Sales permit to the subsequent buyer for the Cigar or Smoking Bar on a one-time basis.

(g) If a spouse or domestic partner acquires the ownership of an Establishment through the death of, or divorce from the owner identified on the permit and submits an affidavit to the Director attesting to the acquisition of the Establishment accompanied by any documentation requested by the Director, the Director may issue a Tobacco Sales permit to the Applicant spouse or domestic partner on a one-time basis.

(Added by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.7. PERMIT AND ANNUAL LICENSE FEES.

(a) The Department shall charge every applicant for a tobacco sales permit a non-refundable application fee for the initial inspection and processing of the application and an annual license fee sufficient to cover the costs of annual inspections, as determined by

the Director. The application and processing fee shall be \$53 and is otherwise governed by Section 35 of the San Francisco Business and Tax Regulations Code. The annual fee is listed in Section 249.16 of the San Francisco Business and Tax Regulations Code. The Fee shall be due annually on March 31 of each year, pursuant to Section 76.1, Article 2 of the San Francisco Business and Tax Regulations Code.*

(b) Beginning with fiscal year 2008-2009, fees set forth in this Section and referred to in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue which is significantly more than the costs of providing the services for which the fees¹ are assessed.

The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

(Added as Sec. 1009.54 by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. [238-11](#), File No. 111101, App. 12/15/2011; Eff. 1/14/2012; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

CODIFICATION NOTE

1. So in Ord. [238-11](#) and previously.

SEC. 19H.8. PERMIT MAY NOT BE TRANSFERRED TO NEW PERSONS OR LOCATIONS.

As described in Section 77 of the San Francisco Business and Tax Regulations Code, tobacco permits may not be transferred or assigned.

(Added as Sec. 1009.55 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.9. ENFORCEMENT AND INSPECTION.

The Director may enforce all provisions of this Article. Specific grounds for enforcement are set forth in Sections 19H.10 through 19H.18. Upon presentation of proper credentials, the Director may enter and inspect at any time during regular business hours any Establishment that is engaging in Tobacco Sales, or is suspected by the Director of

engaging in such sales.

(Added as Sec. 1009.56 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.10. CONDUCT VIOLATING HEALTH CODE ARTICLE 19D (REGULATING CIGARETTE VENDING MACHINES).

(a) Upon a decision by the Director that the Permittee or the agent or employee has engaged in any conduct that violates Health Code Article 19D (regulating cigarette vending machines), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.57 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.11. CONDUCT VIOLATING POLICE CODE SECTION 4600.3 (REGULATING THE SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS).

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Police Code Section 4600.3 (regulating the self-service merchandising of tobacco products), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.58 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.12. CONDUCT VIOLATING HEALTH CODE ARTICLE 19F (PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS).

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates Health Code Article 19F (prohibiting smoking in enclosed areas and sports stadiums), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.59 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.13. CONDUCT VIOLATING TOBACCO CONTROL LAWS.

(a) If the Director decides that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates local, state, or federal law applicable to Tobacco Products or Tobacco Sales, including Administrative Code Chapter 105 (imposing Cigarette Litter Abatement Fee), the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under Section 19H.21 of this Article or a notice of initial determination under Section 19H.22 of this Article.

(Added as Sec. 1009.60 by Ord. 194-08, File No. 080594, App. 8/7/2008; amended by Ord. 173-09, File No. 090724, App. 7/21/2009; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.14. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION 308 (PROHIBITING THE SALE OF TOBACCO TO MINORS).

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates California Penal Code section 308 (prohibiting the sale of tobacco to minors), the Director may suspend a tobacco sales permit as set forth in Section 19H.19.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.61 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.15. CONDUCT VIOLATING CALIFORNIA LABOR CODE SECTION 6404.5 (PROHIBITING SMOKING IN ENCLOSED PLACES OF EMPLOYMENT).

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has engaged in any conduct that violates California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment), the Director may suspend a tobacco sales permit as set forth in Section 19H.19.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.62 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.16. FRAUDULENT PERMIT APPLICATIONS.

(a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee has obtained a tobacco sales permit from the Department by fraudulent or willful misrepresentation, the Director may suspend a Tobacco Sales permit as set forth in Section 19H.19.

(b) Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties as set forth in Section 19H.20.

(c) Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may revoke a Tobacco Sales permit.

(d) Upon a final decision by the Director that the Permittee or the Permittee's agent or employee has obtained a Tobacco Sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties in addition to either suspending or revoking the Tobacco Sales permit.

(e) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article.

(f) Any person who obtained a permit by fraud or misrepresentation may be prosecuted for either an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year.

(Added as Sec. 1009.63 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.17. SELLING TOBACCO WITHOUT A PERMIT.

(a) Upon a final decision by the Director that any person has engaged in the sale of tobacco at any Establishment without a permit, the Director may impose administrative penalties as set forth in Section 19H.20. Persons with a permit application pending under Section 1009.53¹ may sell tobacco without violating Section 1009.64¹ until and unless their permit application is rejected by the Director.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with Section 19H.22 of this Article. This Notice of Initial

Determination may require that all tobacco sales cease and may impose an administrative penalty.

(c) The City Attorney may maintain an action for injunction to restrain any person from selling tobacco without a valid tobacco sales permit. In any such action, the City Attorney may seek civil penalties and may seek a judicial determination that a person must pay any administrative penalties. The person against whom an injunction issues also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing a civil action to enforce the provisions of this section.

(d) Any person who engages in tobacco sales without the required permit may be prosecuted for either an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year.

(Added as Sec. 1009.64 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

CODIFICATION NOTE

1. The sections referenced in the last sentence of division (a) were redesignated as Sec. 19H.4 and this Sec. 19H.17, respectively, by Ord. [259-14](#).

SEC. 19H.18. OTHER ENFORCEMENT.

(a) Violations of this Article are hereby declared to be public nuisances and may be enforced as set forth in Section 596 of the San Francisco Health Code.

(b) Violations of this Article are hereby declared to be unfair business practices and are presumed to damage each and every resident of the community in which the business operates.

(c) In addition to other remedies provided by this Article or by other law, any violation of this ordinance may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The person against whom a successful civil action is brought shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco.

(Added as Sec. 1009.65 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.19. TIME PERIOD OF SUSPENSION OF PERMIT.

When this Article allows the Director to suspend a permit, the following sanctions may be imposed:

- (a) The Director may suspend the permit for a maximum of 90 days for the first violation.
- (b) If a second violation occurs within twelve months of the first violation, the Director

may suspend the permit for a maximum of six months.

(c) Upon the third violation, if within twelve months of the prior violation, the Director may suspend the permit for a maximum of one year.

(d) Each suspension is an independent sanction and is served consecutively.

(Added as Sec. 1009.66 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.20. ADMINISTRATIVE PENALTY.

When this Article allows the Director to impose an administrative penalty, the Director may assess an administrative penalty not exceeding one hundred dollars (\$100) for a first violation; not exceeding two hundred dollars (\$200) for a second violation; and not exceeding five hundred dollars (\$500) for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation.

(Added as Sec. 1009.67 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.21. NOTICE OF CORRECTION.

When the Director commences an enforcement action with a notice of correction, the Director shall serve the notice on the Permittee or the Permittee's agent. The notice shall state that the Department has determined that a violation may have occurred and that reasonable grounds exist to support this determination. The notice may require corrective action immediately or upon a schedule required by the Director. The Director may require the Permittee to post the notice of correction at the location where the Department alleges that violations have occurred. If the Permittee fails to obey a notice of correction, the Director may serve a notice of initial determination in accordance with Section 19H.22 of this Article.

(Added as Sec. 1009.68 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.22. NOTICE OF INITIAL DETERMINATION.

When the Director sends a notice of initial determination, the Director shall serve the notice on the permittee or the permittee's agent. The Notice of Initial Determination may require that all tobacco sales cease. The notice shall state the basis for the Department's initial determination, including the alleged acts or failures to act that constitute a basis for suspension, revocation, and/or an administrative penalty as provided in this Article. After affording the permittee an opportunity to provide information contesting the initial determination, the Director shall issue a decision, including an order imposing an administrative penalty, if any. Copies of this decision and related order(s) shall be served upon the party served with the notice of initial determination. If no notice of appeal of the

Director's decision is filed within the appropriate period, the decision shall be deemed final and shall be effective 15 days after it was issued.

(Added as Sec. 1009.69 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.23. PAYMENT OF ADMINISTRATIVE PENALTIES.

Unless a timely notice of appeal of the Department's final decision is filed, the Department may require payment of any administrative penalty within 30 days of the Director's decision. The Department shall make a written demand for payment by personal delivery or certified mailed notice to the person sanctioned. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The person against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this section, including obtaining a court order requiring payment of the administrative penalty.

(Added as Sec. 1009.71 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.24. APPEALS TO BOARD OF APPEALS.

(a) **Right of Appeal.** The final decision of the Director to deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article I of the San Francisco Business and Tax Regulations Code. An appeal shall stay the action of the Director.

(b) **Hearing.** The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article I of the San Francisco Business and Tax Regulations Code.

(Added as Sec. 1009.72 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.25. OTHER REMEDIES.

Nothing in this Article shall affect any other remedies which are available to the City and County under any law, including (1) Health Code Article 19D (regulating cigarette vending machines); (2) Police Code Section 4600.3 (regulating the self-service merchandising of tobacco products); (3) Health Code Article 19F (prohibiting smoking in enclosed areas and sports stadiums); (4) California Penal Code section 308 (regulating sales of tobacco products to minors); and (5) California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment).

(Added as Sec. 1009.73 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.26. AUTHORITY TO ADOPT RULES AND REGULATIONS.

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

(Added as Sec. 1009.74 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.27. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL WELFARE.

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

(Added as Sec. 1009.75 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.28. PREEMPTION.

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

(Added as Sec. 1009.76 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 19H.29. SEVERABILITY.

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

(Added as Sec. 1009.77 by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.50. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.1 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.51. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.2 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.52. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.3 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.53. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 194-08, File No. 080594, App. 8/7/2008; redesignated as Sec. 19H.4 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.54. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; amended by Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. [238-11](#), File No. 111101, App. 12/15/2011; Eff. 1/14/2012; redesignated as Sec. 19H.7 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.55. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.8 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.56. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.9 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.57. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.10 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.58. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.11 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.59. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.12 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.60. [REDESIGNATED.]

(Added by Ord. 194-08, File No. 080594, App. 8/7/2008; amended by Ord. 173-09, File No. 090724, App. 7/21/2009; redesignated as Sec. 19H.13 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.61. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.14 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.62. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.15 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.63. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.16 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.64. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.17 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.65. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.18 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.66. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.19 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.67. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.20 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.68. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.21 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.69. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.22 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.71. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.23 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.72. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.24 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.73. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.25 and amended by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.74. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.26 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.75. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.27 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.76. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.28 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

SEC. 1009.77. [REDESIGNATED.]

(Added by Ord. 254-03, File No. 030869, App. 11/7/2003; redesignated as Sec. 19H.29 by Ord. [259-14](#), File No. 141098, App. 12/19/2014, Eff. 1/18/2015)

ARTICLE 19N: ELECTRONIC CIGARETTES – RESTRICTIONS ON SALE AND USE

- Sec. 19N.1. Findings and Statement of Purpose.
- Sec. 19N.2. Definitions.
- Sec. 19N.3. Tobacco Sales Permit Required.
- Sec. 19N.4. Prohibiting the Use of Electronic Cigarettes Wherever Smoking of Tobacco Products Is Banned.
- Sec. 19N.5. Prohibiting the Sale of Electronic Cigarettes Wherever the Sale of Tobacco Products Is Prohibited.
- Sec. 19N.6. City Undertaking Limited to Promotion of General Welfare.
- Sec. 19N.7. Rules and Regulations.
- Sec. 19N.8. Preemption.
- Sec. 19N.9. Severability.

SEC. 19N.1. FINDINGS AND STATEMENT OF PURPOSE.

(a) Electronic smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, are battery-operated devices that may resemble cigarettes, although they do not contain tobacco leaf. People who use electronic smoking devices inhale vaporized liquid nicotine extracted from tobacco, or inhale other vaporized liquids, created by heat through an electronic ignition system, and exhale the vapor in a way that mimics smoking.

(b) Electronic cigarettes are presently available for purchase and use in San Francisco.

(c) The FDA's Center for Drug Evaluation and Research, Office of Compliance purchased two samples of electronic cigarettes and components from two leading

brands. These samples included 18 of the various flavored, nicotine, and no-nicotine cartridges offered for use with these products. These cartridges were obtained to test some of the ingredients contained in them and inhaled by users of electronic cigarettes. The FDA's Center for Drug Evaluation and Research, Division of Pharmaceutical Analysis (DPA) analyzed the cartridges from these electronic cigarettes for nicotine content and for the presence of other tobacco constituents, some of which are known to be harmful to humans, including those that are potentially carcinogenic or mutagenic. The DPA's analysis of the electronic cigarette samples showed:

(1) The products contained detectable levels of known carcinogens and toxic chemicals to which users could be exposed.

(2) Quality control processes used to manufacture these products are inconsistent or non-existent.

(3) Tobacco-specific impurities suspected of being harmful to humans – anabasine, myosmine, and β -nicotyrine – were detected in a majority of the samples tested.

(4) Three different electronic cigarette cartridges with the same label were tested and each cartridge emitted a markedly different amount of nicotine with each puff. The nicotine levels per puff ranged from 26.8 to 43.2 mcg nicotine/100 mL puff.

(d) The Surgeon General has found that the chemical nicotine is a powerful pharmacologic agent that acts in the brain and throughout the body and is highly addictive. The United States Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and is a highly toxic substance. Use of nicotine in any form may cause or contribute to cardiovascular disease, complications of hypertension, reproductive disorders, cancers of many types, and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux.

(e) The FDA has raised concerns that electronic cigarettes, including but not limited to flavored electronic cigarettes, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products. A CDC study showed that in 2011 4.7% of all high schoolers had tried e-cigarettes and that in 2012 that number increased to 10.0% of all high schoolers. Electronic cigarettes may not be legally sold to minors in California. Electronic smoking devices and other unapproved nicotine delivery products have a high appeal to youth due to their high tech design and availability in child-friendly flavors like cotton candy, bubble gum, chocolate chip cookie dough and cookies and cream milkshake.

(f) Health authorities have also expressed concerns that the vapors released into the air through the use of an electronic cigarette present a danger to others who breathe them.

(g) The use of an electronic cigarette in public is often indistinguishable from the use of traditional tobacco products, prompting confusion among members of the public wherever smoking is prohibited. Consequently, persons who smoke traditional tobacco products may be induced to do so in areas where smoking is illegal under the mistaken belief that smoking is legal in such areas, or that the ban on smoking in such areas is not being enforced.

(h) Owners of establishments such as office buildings and restaurants encounter similar obstacles seeking to comply with the laws prohibiting smoking in certain locations. An owner may request that a patron stop smoking cigarettes in a restaurant only to have the patron demonstrate that it is an electronic cigarette. The Owner may also be placed in the position of having to confront and examine the cigarettes of any number of customers absent a prohibition on the use of electronic cigarettes where traditional cigarettes are banned.

(i) The agencies charged with enforcing compliance in enclosed and unenclosed spaces will similarly have to devote considerable time and resources determining the individuals smoking electronic cigarettes versus traditional cigarettes.

(j) Some agencies in San Francisco have already adopted restrictions on e-cigarette usage including San Francisco General Hospital, Laguna Honda Hospital, AT&T Ballpark, University of California-San Francisco, San Francisco Department of Public Health and the San Francisco International Airport.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.2. DEFINITIONS.

(a) "Director" means the Director of Public Health or his or her designee.

(b) "Electronic Cigarette" or "E-cigarette" means any device with a heating element, a battery, or an electronic circuit that provides nicotine or other vaporized liquids to the user in a manner that simulates smoking tobacco.

(c) "Establishment" means any store, stand, booth, concession or other enterprise that engages in the retail sales of tobacco products and/or electronic cigarettes.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.3. TOBACCO SALES PERMIT REQUIRED.

(a) An establishment must have a valid tobacco sales permit obtained pursuant to Health Code Section 1009.52 to sell electronic cigarettes.

(b) The Director may enforce this section pursuant to Articles 19*et seq.* of the Health Code including but not limited to Article 19H.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.4. PROHIBITING THE USE OF ELECTRONIC CIGARETTES WHEREVER SMOKING OF TOBACCO PRODUCTS IS BANNED.

(a) The use of electronic cigarettes is prohibited wherever smoking of tobacco products is prohibited by law including Articles 19*et seq.* of the Health Code.

(b) The Director may enforce this section pursuant to Articles 19*et seq.* of the Health

Code including but not limited to the Articles prohibiting smoking in certain spaces or areas.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.5. PROHIBITING THE SALE OF ELECTRONIC CIGARETTES WHEREVER THE SALE OF TOBACCO PRODUCTS IS PROHIBITED.

(a) The sale of electronic cigarettes is prohibited wherever the sale of tobacco products is prohibited by law, including as prohibited in Articles 19*et seq.* of the Health Code.

(b) The Director may enforce this section pursuant to Articles 19*et seq.* of the Health Code including but not limited to Article 19J.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.6. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

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

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.7. RULES AND REGULATIONS.

The Director, after a noticed public hearing, may adopt rules and regulations to carry out the provisions of this Article. Such rules and regulations shall take effect 15 days after the public hearing. Violation of any such rule or regulation may be grounds for administrative or civil action against the permittee pursuant to this Article.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.8. PREEMPTION.

(a) Nothing in this Article shall be interpreted or applied so as to create any power, duty or obligation in conflict with, or preempted by, any Federal or State law. Even if not preempted by Federal or State law, the provisions of this Article shall not apply if the Federal or State law is more restrictive.

(b) This Article shall not apply to any FDA-approved product marketed for therapeutic purposes.

(c) This Article shall not affect any laws or regulations regarding medical cannabis.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

SEC. 19N.9. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

(Added by Ord. [30-14](#), File No. 131208, App. 3/27/2014, Eff. 4/26/2013)

ARTICLE 22B: CONSTRUCTION DUST CONTROL REQUIREMENTS

- Sec. 1240. Definitions.
- Sec. 1241. Applicability of Article.
- Sec. 1242. Site-Specific Dust Control Plan.
- Sec. 1243. Exemption for Interior Only Tenant Improvement Projects.
- Sec. 1244. Waiver of Requirements for Compliance: Rescission of Waiver.
- Sec. 1245. Director's Approval of Dust Control Plan and Notification to the Director of Building Inspection.
- Sec. 1246. Rules and Regulations.
- Sec. 1247. Construction on City Property.
- Sec. 1248. No Assumption of Liability.
- Sec. 1249. Fees.

SEC. 1240. DEFINITIONS.

In addition to the general definitions applicable to this Code, whenever used in this Article, the following terms shall have the meanings set forth below:

- (a) "Applicant" means a person applying for any permit specified in Section 106.3.2.6 of the San Francisco Building Code or, if a permit for the work is not required from the Department of Building Inspection, the owner of the property where the activities will take place.
- (b) "Director" means the Director of the San Francisco Department of Public Health or

the Director's designee.

(c) "Director of Building Inspection " means the Director of the Department of Building Inspection of the City and County of San Francisco.

(d) "Owner" means the owner or owners of the property that is the site of the construction activities.

(e) "Sensitive Receptor" means residence, school, childcare center, hospital or other health-care facility or group living quarters.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1241. APPLICABILITY OF ARTICLE.

This Article shall apply to any site preparation or construction activities taking place within the City and County of San Francisco that has the potential to create dust or that will expose or disturb soil.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1242. SITE-SPECIFIC DUST CONTROL PLAN.

(a) Applicants for projects over a half acre in size shall submit a map showing the location of the project and clearly identifying all surrounding sensitive receptors and particularly noting those within 1,000 feet of the project. The Director of Health shall review this map and any other information available to the Director to verify compliance with this submittal requirement. If no sensitive receptors are determined to be within 1,000 feet of the project, then the Director of Health may issue a waiver to the Applicant that specifies that the project is not required to have a site-specific dust control plan.

(b) For projects determined by the Director to be within 1,000 feet of sensitive receptors, the Applicant will submit a site-specific dust control plan to the Director for approval.

(c) The site-specific dust control plan shall contain all provisions of Section 106.3.2.6.3 of the Building Code and enhanced site-specific dust monitoring and control measures that will apply to the project. These site-specific measures may include the following or equivalent measures, which accomplish the goal of minimizing visible dust:

(1) wetting down areas around soil improvement operations, visibly dry disturbed soil surface areas, and visibly dry disturbed unpaved driveways at least three times per shift per day.

(2) analysis of the wind direction,

(3) placement of upwind and downwind particulate dust monitors,

(4) recordkeeping for particulate monitoring results,

- (5) hiring of an independent third party to conduct inspections for visible dust and keeping records of those inspections,
- (6) requirements for when dust generating operations have to be shut down due to dust crossing the property boundary or if dust is contained within the property boundary but not controlled after a specified number of minutes,
- (7) establishing a hotline for surrounding community members to call and report visible dust problems so that the Applicant can promptly fix those problem; posting signs around the site with the hotline number and making sure that the number is given to adjacent residents, schools and businesses.
- (8) limiting the area subject to excavation, grading, and other demolition or construction activities at any one time,
- (9) minimizing the amount of excavated material or waste materials stored at the site,
- (10) installing dust curtains, plastic tarps or windbreaks, or planting tree windbreaks on the property line on windward and down windward sides of construction areas, as necessary,
- (11) paving, applying water three times daily, or applying non-toxic soil stabilizers on all unpaved access roads, parking areas and staging areas at the construction site. Reclaimed water must be used if required by Article 21, Section 1100 et seq. of the San Francisco Public Works Code, Article 22. If not required, reclaimed water should be used whenever possible.
- (12) loading haul trucks carrying excavated material and other non-excavated material so that the material does not extend above the walls or back of the truck bed. Tightly cover with tarpaulins or other effective covers all trucks hauling soil, sand, and other loose materials before the trucks leave the loading area. Wet prior to covering if needed.
- (13) establishing speed limits so that vehicles entering or exiting construction areas shall travel at a speed that minimizes dust emissions. This speed shall be no more than 15 miles per hour.
- (14) sweeping streets with water sweepers at the end of each day if visible soil material is carried onto adjacent paved roads. Reclaimed water must be used if required by Article 21, Section 1100 et sea, of the San Francisco Public Works Code. If not required, reclaimed water should be used whenever possible.
- (15) installing wheel washers to clean all trucks and equipment leaving the construction site. If wheel washers cannot be installed, tires or tracks and spoil trucks shall be brushed off before they reenter City streets to minimize deposition of dust-causing materials.
- (16) terminating excavation, grading, and other construction activities when winds speeds exceed 25 miles per hour.
- (17) hydroseeding inactive construction areas, including previously graded areas

inactive for at least 10 calendar days, or applying non-toxic soil stabilizers.

(18) sweeping of surrounding streets during demolition, excavation and construction at least once per day to reduce particulate emissions.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1243. EXEMPTION FOR INTERIOR ONLY TENANT IMPROVEMENT PROJECTS.

Interior Only Tenant Improvement Projects that are over one half acre in size and will not produce any exterior visible dust are exempt from complying with these requirements. If the interior only tenant improvement projects are changed during the course of construction and begin producing exterior visible dust then they will be required to immediately comply with Section 1242 by submitting a site-specific dust control plan for the Director's approval.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1244. WAIVER OF REQUIREMENTS FOR COMPLIANCE: RESCISSION OF WAIVER.

(a) The Director may waive the requirements for a site-specific dust control plan as described in Section 1242(a) or if the Applicant demonstrates to the Director's satisfaction that a site-specific dust control plan should not be required.

(b) The Director may rescind a waiver,

(1) if sensitive uses are placed within 1,000 feet of the project;

(2) if requested by the Director of Building Inspection; or

(3) the Director is presented with information that contradicts the Applicant's demonstration that a site-specific dust control plan should not be required.

The Director shall provide the Director of Building Inspection with a copy of the rescission order. If the Director orders rescission of the waiver, the owner of the property and the contractor or other persons responsible for construction activities at the site shall comply immediately with Section 1242 by submitting a site-specific dust control plan for the Director's approval.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1245. DIRECTOR'S APPROVAL OF DUST CONTROL PLAN AND NOTIFICATION TO THE DIRECTOR OF BUILDING INSPECTION.

After the Director has approved the Applicant's dust control plan, the Director shall

provide the Applicant and the Director of Building Inspection with written notification that the Applicant has complied with the requirements of this Article.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1246. RULES AND REGULATIONS.

The Director may adopt, and may thereafter amend, rules, regulations and guidelines that the Director deems necessary to implement the provisions of this Article. A public hearing before the Health Commission shall be held prior to the adoption or any amendment of the rules, regulations and guidelines recommended for implementation. In addition to any notices required by law, the Director shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a written request to the Director for notice of hearings related to the adoption of rules, regulations and guidelines under this section.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1247. CONSTRUCTION ON CITY PROPERTY.

All departments, boards, commissions, and agencies of the City and County of San Francisco that authorize construction or improvements on land under their jurisdiction under circumstances where no building, excavation, grading, foundation, or other permit needs to be obtained under the San Francisco Building Code shall adopt rules and regulations to insure that the same dust control requirements that are set forth in this Article are followed. The Directors of Public Health and Building Inspection shall assist the departments, boards, commission and agencies to insure that these requirements are met.

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1248. NO ASSUMPTION OF LIABILITY.

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

(Added by 176-08, File No. 071009, App. 7/30/2008)

SEC. 1249. FEES.

The Director is authorized to charge the following fees to defray the costs of document processing and review, consultation with applicants, and administration of this Article: for fiscal year 2008-2009 (1) an initial fee of \$492, payable to the Department upon the filing of a Dust Control Plan with the Department; and (2) an additional fee of \$164 per hour for time spent in document processing and review and applicant consultation exceeding three hours or portion thereof payable to the Department. Beginning with fiscal year 2009-2010, no later than April 15 each year, the Controller shall adjust the fees provided in this

Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round these fees up or down to the nearest dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are fully recovered and that fees do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary in either case.

(Added by 176-08, File No. 071009, App. 7/30/2008)

ARTICLE 30: REGULATION OF DIESEL BACKUP GENERATORS

- Sec. 2001. Findings and Purpose.
- Sec. 2002. Definitions.
- Sec. 2003. Certificate of Registration Required.
- Sec. 2004. Application for Certificate.
- Sec. 2005. Issuance of Certificate.
- Sec. 2006. Requirements.
- Sec. 2007. Notification to the Department.
- Sec. 2008. Renewals And Transfers.
- Sec. 2009. General Provisions and Disclaimer.
- Sec. 2010. Record Keeping.
- Sec. 2011. Violations.
- Sec. 2012. Director's Authority.
- Sec. 2013. Enforcement Actions.
- Sec. 2014. Penalties.
- Sec. 2015. Director's Hearing.
- Sec. 2016. Collection.
- Sec. 2017. Fee Schedule.
- Sec. 2018. Annual Fee Adjustment.
- Sec. 2019. Delinquent Fees.
- Sec. 2020. Refund of Fees.
- Sec. 2021. Regulations.
- Sec. 2022. Disclaimer of Liability.
- Sec. 2023. Duties Are Discretionary.
- Sec. 2024. Severability.

Sec. 2025. Sunset Provision.

SEC. 2001. FINDINGS AND PURPOSE.

The Board of Supervisors finds and declares the following:

- (a) Diesel Backup Generators emit large amounts of smog-forming nitrogen oxides (NOx), particulate matter with a diameter of 10 microns or less (PM₁₀), sulfur oxides and hydrocarbons contributing to ground-level ozone, and reduced visibility.
- (b) Diesel exhaust is linked to short and long-term adverse health effects in humans, which include lung cancer, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, and chronic bronchitis and decreased lung function.
- (c) In August of 1998, the California Air Resource Board listed diesel exhaust, specifically particulate emissions from diesel fueled engines, as a "toxic air contaminant."
- (d) According to the Bay Area Air Quality Management District (BAAQMD), Diesel Backup Generators tend to emit more pollutants than a new well-controlled power plant. In fact, even a clean diesel backup generator may emit more than 20 times as much NOx per kilowatt-hour as a new well-controlled power plant. Older dirtier Diesel Backup Generators may emit 200 times as much NOx.
- (e) The Bay Area is currently designated nonattainment for the national ozone standards by the United States Environmental Protection Agency.
- (f) The Bay Area is currently designated nonattainment for the state ozone and PM₁₀ standards by the California Air Resource Board.
- (g) The City and County of San Francisco is concerned about the health hazards posed by diesel emissions polluting the air, and wishes to impose limitations on Diesel Backup Generators to reduce the emission of diesel exhaust.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2002. DEFINITIONS.

As used in this Article, the defined terms shall have the following meaning:

- (a) "Certificate of Registration" or "Certificate" shall mean a certificate of registration issued pursuant to this Article.
- (b) "Commission" shall mean the San Francisco Health Commission as established by Section 4.110 of the San Francisco Charter.
- (c) "Department" shall mean the San Francisco Department of Public Health.
- (d) "Diesel Backup Generator" shall mean any internal combustion engine or gas turbine

with an output rating of 37.3 kilowatt (50 horsepower) or greater and used or designed to be used as a Distributed Generation Unit which may be powered by distillate fuel, such as diesel. Diesel Backup Generator shall not include any portable internal combustion engine or gas turbine registered with the California Air Resources Board pursuant to the California Code of Regulations, Title 13, Chapter 9, Article 5.

(e) "Director" shall mean the Director of the Department or her or his designee.

(f) "Distributed Generation Unit" shall mean an electrical generation unit that produces electricity near the place of use.

(g) "Emergency Use" shall mean the temporary operation of the Diesel Backup Generator to provide electrical power during an actual Outage caused by sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire or other acts of Nature, or other events beyond the control of the Owner and/or the Operator, its officers, employees, and contractors.

(h) "Non-Emergency Use" shall mean any operation of the Diesel Backup Generator that does not qualify as Emergency Use.

(1) Non-Emergency Use shall include without limitations: (i) operation of a Diesel Backup Generator to test its ability to perform during an emergency and (ii) operation of a Diesel Backup Generator before or after an actual Outage.

(2) Non-Emergency Use shall not include: (i) reliability testing of the Diesel Backup Generator required by a government regulatory agency in accordance with federal or state laws or regulations; (ii) use of Diesel Backup Generators during emergency drills or maintenance of critical electrical components at sites that have been designated by the City's Office of Emergency Services as the official Citywide emergency command and control centers; and (iii) testing of the Diesel Backup Generator required by any Repair performed on the generator.

(i) "Operator" shall mean any Person who is in control of or operates a Diesel Backup Generator.

(j) "Outage" shall mean the actual loss of normal electrical power service to a facility.

(k) "Owner" shall mean any Person who has equity in and/or legal title to the Diesel Backup Generator.

(l) "Person" shall mean an individual trust, firm, joint stock company, corporation including a government corporation, partnership, association.

(m) "Registrant" shall mean any Person to whom a Certificate is issued pursuant to this Article and any authorized representative, agent or designee of such Person.

(n) "Repair" shall mean any work that restores to optimum or designed usage of the Diesel Backup Generator that has become damaged or non-functional, through the replacement, reconnection, reassemble, and/or adjustment of component(s) of the generator. Repair shall not include periodic maintenance or routine reliability testing

recommended by the manufacturer of the Diesel Backup Generator.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2003. CERTIFICATE OF REGISTRATION REQUIRED.

(a) **Pre-Existing Diesel Backup Generators.** Not later than one (1) year after the effective date of this Article, no Person shall own or operate a Diesel Backup Generator that was installed prior to the effective date of this Article unless the Person has obtained a Certificate pursuant to this Article.

(b) **New Diesel Backup Generators.** Except as otherwise provided herein, any Person owning or operating a Diesel Backup Generator that is installed after the effective date of this Article in any facility within the City and County of San Francisco shall submit an application pursuant to Section 2004 of this Article within 90 days of the installation.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2004. APPLICATION FOR CERTIFICATE.

(a) Any Person required to obtain a Certificate pursuant to this Article shall file an application, providing such information as required by Subsection (b) and submitting the appropriate fees as specified in this Article. Applicant's failure to submit the required information or fees shall render such submission incomplete and not accepted for filing.

(b) Applicant shall submit the following information:

- (1) The Owner of the Diesel Backup Generator and its address;
- (2) The Operator of the Diesel Backup Generator, if different from the Owner, and its address;
- (3) The name and address of facility in which the Diesel Backup Generator will be used;
- (4) The name of the manufacturer of the Diesel Backup Generator;
- (5) The model name and/or number of the Diesel Backup Generator;
- (6) The model year of the Diesel Backup Generator;
- (7) The maximum energy output rating of the Diesel Backup Generator;
- (8) Any emission control equipment associated with the Diesel Backup Generator, if any;
- (9) A copy of the manufacturer's specifications of the emission rate of the Diesel Backup Generator for criteria and toxic air pollutants and the manufacturer's specifications for testing of the Diesel Backup Generator for reliability purposes, if available;
- (10) The method of storage of the fuel for the Diesel Backup Generator; and

(11) Any other information that the Department deems appropriate.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2005. ISSUANCE OF CERTIFICATE.

Unless otherwise provided in this Article, upon the acceptance of a completed application for filing, the Department shall issue a Certificate.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2006. REQUIREMENTS.

(a) Except as otherwise provided in this Section, the Certificate issued pursuant to this Article shall limit operating hours of a Diesel Backup Generator for Non-Emergency Use to 50 hours each year. Nothing in this Subsection shall prohibit or restrict the Owner or Operator from operating the Diesel Backup Generator for manufacturer's required liability testing that is beyond the hour limitations set forth in this Subsection; Provided that the Owner or Operator submits to the Department the manufacturer's specification which requires operation beyond the annual hour limitations set forth in this Subsection to test the Diesel Backup Generator for reliability purposes in which case the maximum allowable annual hours of operation for Non-Emergency Uses shall be the hours specified in the manufacturer's specification.

(b) Any Diesel Backup Generator installed after the effective date of this Article shall have the best available control technologies as determined by the California Air Resource Board or the Bay Area Air Quality Management District installed to reduce air emissions.

(c) Owner and/or Operator shall conduct periodic maintenance of the Diesel Backup Generator as recommended by the engine manufacturer. The periodic maintenance shall be conducted at least once each calendar year.

(d) Owner and/or Operator of the Diesel Backup Generator shall equip the Diesel Backup Generator with a non-resettable totalizing meter that measures the hours of operation or fuel usage.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2007. NOTIFICATION TO THE DEPARTMENT.

Within ten (10) days from the completion of a Repair of a Diesel Backup Generator, the Owner and/or Operator shall submit to the Department documentation regarding the Repair. Such documentation includes, without limitations, (a) the name of the person performing the Repair, (b) the purpose of the Repair, (c) a description of the Repair work performed, (d) the amount of time for which the Diesel Backup Generator was operated to test the effectiveness of the Repair, and (e) for operation of the Diesel Backup Generator after a Repair that exceeds one (1) hour, documentation demonstrating to the satisfaction of the Director that such operation is needed to test the efficacy of the

Repair.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2008. RENEWALS AND TRANSFERS.

(a) Certificates issued pursuant to this Article shall be valid for a term of one (1) year.

(b) Every application for a renewal of a Certificate shall be made thirty (30) days before the expiration of such Certificate and shall be accompanied by the appropriate fees set forth in this Article. The renewal application shall include: (1) either (i) a certification from the Registrant that information in the original Certificate of Registration application and any addenda thereto have not changed, or (ii) updated information regarding the operation of the Backup Generator to the Department that is not in the original Certificate of Registration application or addenda thereto and (2) a copy of the monthly logs kept pursuant to Section 2010 of this Article during the term of the prior Certificate.

(c) Any Certificate for which a properly completed application for renewal has been received by the Department pursuant to Subsection (b) of this Section shall remain in effect until: (1) the application for renewal is granted, (2) a decision has been made on the application and all appeals have been exhausted, or (3) the denial of the renewal application and the time for appeal has expired.

(d) The Department shall deny an application for renewal if the Owner and/or Operator failed to comply with any final order issued pursuant to this Article. The Registrant may file an appeal within thirty (30) days from the issuance of the Department's decision on the renewal application. Upon the receipt of a timely filed notice of appeal, the Director shall hold a public hearing pursuant to Section 2015 of this Article. The Department's decision shall be final and deemed a Director's order if the Registrant fails to file a timely appeal.

(e) A Certificate shall be transferable upon a change in ownership of a Diesel Backup Generator; provided that, within thirty (30) days of a change in Ownership, the Department shall be notified of such change.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2009. GENERAL PROVISIONS AND DISCLAIMER.

(a) A Certificate issued pursuant to this Article does not take the place of any permit or license required by State, federal, or local laws nor does compliance with the requirements of this Article relieve any party of compliance with any other applicable State, federal or local laws.

(b) Issuance of a Certificate does not constitute authorization to own or operate a Diesel Backup Generator if such ownership and/or operation violates provision of this Article or any other local, federal, or State laws or regulations.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2010. RECORD KEEPING.

Owner and/or Operator shall maintain a monthly maintenance and usage log for Diesel Backup Generators regulated under this Article which shall contain the following information: (1) total hours of operation; (2) hours of operation qualifying as Emergency Use; (3) for each Emergency Use, a description of the nature of the emergency condition; (4) hours of operation caused by a Repair; (5) hours of operation attributable to reliability testing; (6) a record of maintenance performed on the Diesel Backup Generator; and (7) a record of all Repair performed on the Diesel Backup Generator. All records kept pursuant to this Section shall be kept for at least three (3) years and maintained at the facility where the Diesel Backup Generator is located unless the Owner and/or Operator receives prior approval from the Department to maintain such records at another location. Such records shall be available for inspection by the Department upon request.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2011. VIOLATIONS.

The following acts or omissions shall be a violation of this Article:

- (a) Failure to maintain a current and valid Certificate issued Pursuant to this Article;
- (b) Failure to operate the Diesel Backup Generator pursuant to the terms and conditions of a Certificate issued pursuant to this Article;
- (c) Failure to comply with any requirements of this Article;
- (d) Fraud or willful misrepresentation, or any wilfully inaccurate or false statement made in an application for or renewal of a Certificate;
- (e) Fraud or willful misrepresentation, or any willfully inaccurate or false statement made in any report or record required by this Article.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2012. DIRECTOR'S AUTHORITY.

The Director shall have the authority to administer and enforce all provisions of this Article. The Director may issue Certificates for Diesel Backup Generators, deny, revoke or suspend any Certificate issued pursuant to this Article; enforce the provisions of this Article by any lawful means available for such purpose; and inspect records of and facilities with Diesel Backup Generators to determine compliance with this Article.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2013. ENFORCEMENT ACTIONS.

- (a) **Administrative Complaint Order.** Whenever the Department determines that a

Person is in violation of this Article, the Department may issue an administrative complaint order requiring the Person to comply with this Article and to assess an administrative penalty set forth in Section 2014 of this Article. The order shall allege sufficient facts to show a violation of this Article. Such order shall be served personally or by certified mail, return receipt requested, upon the Person alleged to be in violation of this Article. A Person who is subject to the administrative complaint order may file an appeal to the Director within thirty (30) days from the issuance of the order. Upon the receipt a timely filed appeal, the Director shall hold a public hearing pursuant to Section 2015 of this Article. The administrative complaint order shall be final and shall be deemed a Director's order if the Person fails to file a timely appeal to the Director. Any administrative complaint order issued shall be approved as to form by the City Attorney.

(b) **Order to Show Cause.** Whenever the Director finds that an Owner and/or Operator is operating a Diesel Backup Generator in violation of this Article, any order or any Certificate issued pursuant to this Article, the Director may issue an order to show cause to the Owner and/or Operator on why the Certificate should not be revoked or suspended. The order to show cause shall specify the date and location of hearing for the order to show cause and shall be served personally or by certified mail, return receipt requested upon the Owner and/or Operator. The Director shall hold a hearing pursuant to Section 2015 of this Article.

(c) **Injunctive Relief.**

(1) Upon failure of any Person to comply with the requirements of this Article, a Certificate, any regulation, or any other order issued by the Director, the City Attorney, upon request by the Director, may petition the proper court for injunctive relief, payment of civil penalties, and any other appropriate remedy, including restraining such Person from continuing any prohibited activity and compelling compliance with lawful requirements.

(2) In any civil action brought pursuant to this Article in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it is not necessary to allege or prove at any state of the proceeding any of the following:

(A) Irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued;

(B) The remedy at law is inadequate;

The court shall issue a temporary restraining order, preliminary injunction, or permanent injunction in a civil action brought pursuant to this Article without the allegations and without the proof specified above.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2014. PENALTIES.

(a) **Civil Penalties.** Any Person found to be in violation this Article shall be civilly liable to the City in an amount not to exceed six thousand dollars (\$6,000) per day per violation.

(b) **Administrative Penalties.** Any Person found to be in violation of this Article shall be civilly liable to the Department in the amount as follows:

(1) For failure to maintain a valid Certificate-up to \$200 per day.

(2) For operating or allowing the operation of a Diesel Backup Generator beyond the allowable hours of operation for Non-Emergency Use-up to \$250 for each hour beyond the allowable hours. Fractional hours shall be rounded up the next whole hour.

(3) For failing to submit required information or to maintain records of operation for the Diesel Backup Generator-up to \$425 per violation.

(4) For providing false information or records to the Department-up to \$850 per violation.

(5) For failing to comply with a final Director's Order-up to \$2,000 per day.

(c) **Penalty Assessment.** A civil penalty pursuant to Subsection (a) of this Section shall not be recoverable for a violation if an administrative penalty was imposed pursuant to Subsection (b) of this Section for the same violation. Each day in which a Person fails to comply with the requirements of this Article shall be a separate and distinct violation.

(d) **Factors Considered in Penalty Assessment.** In determining the appropriate amount of civil or administrative penalties, the court or the Director shall consider the following: (1) the nature and persistence of the violation, (2) the frequency of past violations, (3) any action taken to mitigate the violation, (4) the economic benefits accrued to the violator as a result of the violation, and (5) the financial burden to the violator.

(e) **Remedies not Exclusive.** Remedies under this Section are in addition to and do not supersede or limit any and all other remedies, civil or criminal, that are available in law or equity.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2015. DIRECTOR'S HEARING.

Any hearing required by this Article shall be conducted as follows:

(a) The Director shall serve a notice of hearing or order to show cause at least thirty (30) days before the date of the public hearing to the Person alleged to be in violation of this Article. Such notice or order to show cause shall specify the purpose of the public hearing and notify the Person of the date, time, and the location of the public hearing. Notices of hearing or order to show cause shall also be given by publication in a newspaper of general circulation in the City for at least two (2) days and not less than ten (10) days before the date of the hearing. Written notices setting forth the date of the public hearings shall be sent to any interested party who has requested, in writing, to be notified such hearings. Upon a written request from the Person submitted at least two (2) business days before the date of the public hearing, the Director may continue the date of the hearing once for not more than thirty (30) days. The Person requesting the

continuance shall reimburse the Department for the costs of re-noticing the public hearing.

(b) In any public hearing held pursuant to this Section, all interested parties shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, to be represented by counsel, and to confront and cross-examine any witness against them. Any public hearing held pursuant to this Section shall be electronically recorded.

(c) Within thirty (30) days after the date of the hearing, the Director shall issue a written decision and order containing finding of facts and statement of reasons in support of the decision. Such decision shall be served upon the Person alleged to be in violation of this Article either personally or by certified mail, return receipt requested, and shall be served on other interested party who provided testimony at the hearing by first class mail, if such party requested at or before the hearing that the order be sent to them. The Director's order shall be final. The order shall apprise the Person alleged to be in violation of this Article of his or her right to seek judicial review of the Director's Order pursuant to Section 1094.6 of the California Code of Civil Procedures.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2016. COLLECTION.

(a) Cost and charges incurred by the Department by reason of the abatement of any violation of this Article, including but not limited to inspection costs, and any final administrative penalties assessed against a Person or violation of this Article shall be an obligation owed to the City by the Person against whom the final administrative penalty was assessed. Such obligation may be collected by means of the imposition of a lien against the Person against whom the final administrative penalty was assessed if such Person is the property owner of the facility upon which the violation of this Article had occurred. The Department shall mail to the Person against whom the final administrative penalty was assessed a notice of the amounts due and a warning that a lien proceeding will be initiated against the Property on which the Backup Generator found to be in violation of this Article is located if the amounts are not paid within thirty (30) days after the mailing of the notice, when appropriate.

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

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2017. FEE SCHEDULE.

(a) All Applicants for a Certificate or a renewal of a Certificate shall submit an application fee of \$178.

(b) In addition to the fee provided for in Subsection (a) of this Section, applicants who

are not regulated under Article 21 of this Code shall pay an additional fee of \$172.

(c) Beginning with fiscal year 2008-2009, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue which is significantly more than the costs of providing the services for which the fees are assessed.

The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002; Ord. 153-08, File No. 080740, App. 7/30/2008)

SEC. 2018. ANNUAL FEE ADJUSTMENT.

After the effective date of this Article, on July 1st of each year, the fees set forth therein shall be increased by four percent (4%).

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2019. DELINQUENT FEES.

(a) Any person who fails to submit a timely application to register or to renew a registration or fails to submit the application fee specified in Section 2016(a) of this Code shall be subject to a onetime late-penalty fee of one hundred and sixty-three dollars (\$163).

(b) All fees shall be due and payable within 30 days of the date of issuance of a notice of payment due. In addition to any other penalties provided for in this Article, delinquent fees shall be subject to a penalty of ten percent (10%) plus interest at the rate of one percent (1%) per month on the outstanding balance which shall be added to the amount of the fee collected from the date that payment is due.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2020. REFUND OF FEES.

Registration applicant shall not be entitled to a refund or rebate of a fee because the Certificate is denied or the application is withdrawn. Registration fees are not refundable if

the Owner and/or Operator discontinues the use of the Diesel Backup Generator prior to the expiration of the Certificate.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2021. REGULATIONS.

(a) The Director may adopt and, from time to time, may amend reasonable regulations implementing the provisions and intent of this Article. The regulations shall be approved by the Commission at a public hearing. In addition to the notices required by law, before the Commission approves the issuance or amendment of any rule or regulation pursuant to this Article, the Director shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of San Francisco of the intent to issue or amend the rule or regulation.

(b) Regulations Promulgated by the Director and approved by the Commission shall be maintained in the Office of the Clerk of the Board of Supervisors.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2022. DISCLAIMER OF LIABILITY.

(a) The degree of protection required by this Article is considered reasonable for regulatory purposes. This Article shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this Article or any administrative decision lawfully made pursuant to this Article.

(b) In undertaking this program to obtain disclosure of information relating to the location of Diesel Backup Generators, 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.

(c) All inspections specified in this Article shall be at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2023. DUTIES ARE DISCRETIONARY.

Subject to the limitations of due process, notwithstanding any other provision of this Code whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2024. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2025. SUNSET PROVISION.

In the event that either the Bay Area Air Quality Management District or the California Air Resources Board adopts enforceable regulations applicable to Diesel Backup Generators regulated under this Article that are as or more stringent than the operational hours limitation for Non-Emergency Uses for such generators, the Director shall notify the Board of Supervisors of such regulations. This Article shall become null and void on the effective date of such regulations unless the Board of Supervisors amends this Article establishing a more stringent operational hours limitation for Non-Emergency Uses than such regulations.

(Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

ARTICLE 38: ENHANCED VENTILATION REQUIRED FOR URBAN INFILL SENSITIVE USE DEVELOPMENTS

- Sec. 3801. Short Title.
- Sec. 3802. Findings.
- Sec. 3803. Purposes and Goals.
- Sec. 3804. Definitions.
- Sec. 3805. Applicability of Article.
- Sec. 3806. Air Pollutant Exposure Zone and Air Pollutant Exposure Zone Map.
- Sec. 3807. Enhanced Ventilation Requirement.
- Sec. 3808. Maintenance of Documents by Department.
- Sec. 3809. Rules and Regulations.
- Sec. 3810. Maintenance and Disclosure Requirements.
- Sec. 3811. Fees.
- Sec. 3812. No Conflict with Federal or State Law.
- Sec. 3813. Severability.
- Sec. 3814. Undertaking for the General Welfare.

SEC. 3801. SHORT TITLE.

This Article shall be entitled Enhanced Ventilation Required for Urban Infill Sensitive Use Developments.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3802. FINDINGS.

(a) Scientific studies show that exposure to particulate matter from air pollution leads to significant human health problems, including: aggravated asthma; chronic bronchitis; reduced lung function; irregular heartbeat; heart attack; and premature death in people with heart or lung disease. Exposure to air pollutants that are carcinogens can also have significant human health consequences. For example, exposure to diesel exhaust is an established cause of lung cancer.

(b) Heart disease and stroke are the first and fourth leading causes of death in the U.S. respectively. Air pollution affects heart health and can trigger or contribute to heart attacks and strokes. One in three Americans has heart or blood vessel disease and is at higher risk from air pollution. Impacts on the lungs may take several forms. Short-term effects include deficits in lung function that can limit breathing, especially during exercise. Irritants from air pollution may cause airway constriction or chest tightening that is uncomfortable or limiting to normal activity. These changes in lung function are sometimes accompanied by underlying lung tissue inflammation which over the long term may lead to chronic lung disease. Exposure to air pollutants may be a contributing factor to leading causes of death recorded for San Francisco's population (ischemic heart disease; lung, bronchus and tracheal cancers; cerebrovascular disease; chronic obstructive pulmonary disease; hypertensive heart disease and lower respiratory infection).

(c) Persons living in close proximity to air pollution sources, such as freeways or busy roadways, have poorer lung functions and are more susceptible to developing asthma and other respiratory problems, compared with persons living at a greater distance from such sources. The California Air Resources Board's 2005 Land Use Guidance document, "Air Quality and Land Use Handbook: A Community Health Perspective," reviewed traffic-related air pollution studies and found that particulate matter pollution levels decrease by about 70 percent at 500 feet from freeways and high-traffic roadways, defined as urban roads with 100,000 vehicles/day or rural roads with 50,000 vehicles/day.

(d) Proximity to sources of air pollution increases exposure, and proximity to sources is established to be more common for the poor and for certain ethnic minorities.

(e) Consequently, health vulnerability varies among neighborhoods and populations within San Francisco, as measured by population health records of air pollution-associated hospital discharges and emergency room visits, and non-accident mortality. Health vulnerable populations are likely to have more significant health consequences from air

pollutant exposure compared to populations that are less vulnerable.

(f) Existing regulatory control measures, often focused on new stationary sources of emissions and average regional air pollution concentrations, are not sufficient to address all local sources of exposure or disparities in exposure.

(g) "Sensitive Use" buildings have the highest proportion of individuals who are most vulnerable to air pollutant exposures.

(h) Available technologies exist to protect sensitive uses from air pollution health effects. Available and accepted air pollution modeling technology allows for the estimation of certain air pollutant concentrations for individual land parcels. Furthermore, available building ventilation and engineering technologies provide mechanisms to protect indoor environments from the infiltration of ambient air pollutants.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3803. PURPOSES AND GOALS.

(a) The purpose of this Article 38 is to protect the public health and welfare by establishing an Air Pollutant Exposure Zone and imposing an enhanced ventilation requirement for all urban infill sensitive use development within the Air Pollutant Exposure Zone.

(b) The goals of this Article 38 are to maintain and increase the stock of infill housing and other sensitive use development in the City while reducing the risk to human health from air pollutants among occupants of, and visitors to, buildings in the Air Pollutant Exposure Zone.

(Added by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3803 redesignated as Sec. 3804 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3804. DEFINITIONS.

For the purposes of this Article 38, the following words shall have the following meanings:

"Air Pollutant Exposure Zone" means those areas within the City which, by virtue of their proximity to air pollution emissions sources, including Freeways, have substantially greater concentrations of air pollutants. The Air Pollutant Exposure Zone shall be modeled according to specific risk factors defined in the Rules and Regulations, and will include at a minimum, criteria for maximum allowed excess cancer risks and maximum PM_{2.5} concentrations; these criteria shall be more stringent in Health Vulnerable Locations, as defined below.

"Building" means a building that contains a "Sensitive Use" and that is either:

(1) a new building; or

(2) a building undergoing a "Major Alteration to Existing Building" as defined by the San Francisco Green Building Code; or

(3) a building undergoing a Planning Department permitted change of use.

"City" means the City and County of San Francisco.

"Department" means the San Francisco Department of Public Health.

"Director" means the Director of the San Francisco Department of Public Health or the Director's designee.

"Enhanced Ventilation" means a ventilation system capable of achieving the protection from particulate matter (PM_{2.5}) equivalent to that associated with a Minimum Efficiency Reporting Value (MERV) 13 filtration (as defined by American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standard 52.2).

"Freeway" refers to freeways as defined in the San Francisco General Plan, Transportation Element.

"Health Vulnerable Locations" means those San Francisco zip codes, census tracts or other defined locations having the highest percentage of health vulnerable residents, based on criteria such as State discharge data from respiratory and cardiovascular related hospitalizations, non-accident mortality, or other criteria as determined by the Director and specified in the Rules and Regulations enacted under this Article.

"PM_{2.5}" means solid particles and liquid droplets found in the air, that are less than or equal to 2.5 micrometers (µm) in diameter.

"Sensitive Use" means:

(1) any building or facility designed for residential use, including but not limited to those defined by City, state or federal law and regulations, excluding Tourist Hotels;

(2) any facility serving specific populations, including but not limited to California Department of Social Services (CDSS)-licensed Adult Day Care Centers, Adult Support Centers, Child Care Centers, Family Child Care Homes, Infant Care Centers, School-Aged Child Care Centers, and Community Treatment Centers;

(3) any California Department of Education (CDE)-licensed schools;

(4) any California Department of Public Health (CDPH)-licensed Health Care Facilities with 24-hour care, except for CDPH-licensed hospitals, which are subject to specific regulations;

(5) any California Building Code Section 305-defined occupancies of Educational Group E;

(6) any California Building Code Section 308-defined occupancies of Institutional

Group I; and

(7) any California Building Code Section 310-defined occupancies of Residential Group R.

"Site" means a parcel of land as defined in the San Francisco Building Code.

(Added as Sec. 3803 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3804 redesignated as Sec. 3805 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3805. APPLICABILITY OF ARTICLE.

This Article 38 shall apply to Sensitive Use buildings located on a site identified as within the Air Pollutant Exposure Zone that are either:

- (a) Newly constructed; or
- (b) Undergoing a "Major Alteration to Existing Building" as defined by the San Francisco Green Building Code; or
- (c) The subject of an application for a Planning Department-permitted Change of Use.

(Added as Sec. 3804 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3805 redesignated as Sec. 3806 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3806. AIR POLLUTANT EXPOSURE ZONE AND AIR POLLUTANT EXPOSURE ZONE MAP.

(a) The Director shall create an Air Pollutant Exposure Zone Map according to Rules and Regulations as authorized by Section 3809. The Air Pollutant Exposure Zone Map shall depict all locations in the City where the estimated cumulative PM_{2.5} concentration is greater than 10 µg/m³ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 100 in a million. Additionally, the Air Pollutant Exposure Zone Map shall include all locations within 500 feet of any Freeway, if those locations were not otherwise captured by modeling estimates. Within Health Vulnerable Locations, the Air Pollutant Exposure Zone Map shall depict all locations where the estimated cumulative PM_{2.5} concentration is greater than 9 µg/m³ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 90 in a million. The Director shall update the Air Pollutant Exposure Zone Map to identify new sources, updated pollutant standards, additional pollutants and standards for those pollutants, and updated methodologies in accordance with Section 3809 and the accompanying Rules and Regulations for this Article 38.

(b) The Director shall, at least once every five years, updated the Rules and Regulations governing creation of the Air Pollutant Exposure Zone Map to account for changes in information including, but not limited, to:

(1) Information available to estimate air pollutants of health concern;

(2) Information available to determine Health Vulnerable Locations; and

(3) Information that may affect delineation of the Air Pollutant Exposure Zone, including, but not limited to:

(A) Construction, expansion or modification of major roadways;

(B) Changes in traffic patterns in the City's roadway system;

(C) Changes in area sources or siting of industrial or commercial sources of air pollution; and

(D) Climatic factors for which there is evidence of changes to air quality.

(c) The Director shall post the Air Pollutant Exposure Zone Map on the Department's website, and make paper copies of the map available to the public upon request.

(d) In creating and updating the Air Pollutant Exposure Zone Map, the Director shall follow the procedures specified in Section 3809.

(e) The Air Pollutant Exposure Zone Map that is operative as of the effective date of Ordinance No. [224-14](#) amending this Article 38, is on file with the Clerk of the Board of Supervisors in File No. 140806.

(Added as Sec. 3805 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3806 added by Ord. 281-08, File No. 080934, 12/5/2008; repealed by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3807. ENHANCED VENTILATION REQUIREMENT.

(a) Any person or entity to whom this Article 38 applies, as defined in Section 3805, shall submit to the Director an Enhanced Ventilation Proposal, prepared by, or under the supervision of, a licensed mechanical engineer or other individual authorized by the California Business and Professions Code Sections 6700-6799 (Professional Engineers Act) to design mechanical ventilation systems that meet the requirements of this Article 38 and San Francisco Building Code Section 1203.5. An Enhanced Ventilation Proposal shall include the name, title and license number of the person submitting such proposal.

(b) The Enhanced Ventilation Proposal shall explain how the project will achieve the standards mandated by this Article 38 and accompanying the Rules and Regulations as described and updated according to Section 3809, San Francisco Building Code Section 1203.5, and any relevant amendments or revisions thereto. The Enhanced Ventilation Proposal shall include a statement signed by the person who prepared it, in accordance

with the requirements of Section 3807(a), certifying that in his or her judgment the ventilation system proposed will be capable of achieving the protection from particulate matter (PM_{2.5}) equivalent to that associated with MERV 13 filtration (as defined by ASHRAE standard 52.2). In updates to the Rules and Regulations, the Director may specify additional or alternative protective equivalents as technology and research dictate.

(c) The Director shall review the Enhanced Ventilation Proposal and may require additional modification or justification prior to the Director's approval. The Director shall issue a letter to the Department of Building Inspection Permit Services Energy/Mechanical Plan Review Section identifying and attaching the letter describing the approved Enhanced Ventilation Proposal.

(d) Building permit documents submitted to the Department of Building Inspection shall incorporate all designs and details necessary for the construction of the approved Enhanced Ventilation system. The Department of Building Inspection shall review submitted plans to assure compliance with the Director-approved Enhanced Ventilation proposal and shall not issue permits for the construction, installation, or modification of the Enhanced Ventilation systems unless it is in compliance with the approved proposal.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3808. MAINTENANCE OF DOCUMENTS BY DEPARTMENT.

The Enhanced Ventilation Proposal, Certification and related documents shall become part of the file maintained by the Department. Such file shall be available to the public upon request.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3809. RULES AND REGULATIONS.

(a) Within 90 days after the effective date of Ordinance No. [224-14¹](#), amending Article 38, the Director shall issue Rules and Regulations necessary to effectuate the purposes of this Article and to protect public health and safety. Any person or entity as defined in Section 3805 shall comply with this Article, the Rules and Regulations, and all applicable local, state, and federal laws.

(b) The Director shall consult with the Planning Department's Environmental Review Officer at least 30 days prior to initiating any amendments or modifications to the Rules and Regulations.

(c) The Director shall consult with the Municipal Green Building Task Force, as established in Environment Code Sec. 702, or any successor body, to coordinate and resolve any potential conflicts that may arise between the San Francisco Green Building Code and this Article 38.

(d) Rules and Regulations shall, at a minimum, meet the following standards and criteria:

(1) The criteria used for the definition of "Health Vulnerable Locations" shall be at least as health-protective as that of the Bay Area Air Quality Management District (BAAQMD) methodology. BAAQMD methodology defines those zip codes in San Francisco in the worst quintile of Bay Area health vulnerability scores based on two years of statewide hospitalization and emergency room visit records, and estimated costs, for the following air pollution related conditions per zip code: Chronic Obstructive Pulmonary Disease (COPD) Hospital Admissions, Pneumonia Hospital Admissions, Myocardial Infarction (MI, Heart Attack) Hospital Admissions and Emergency Room Visits, Cardiovascular Hospital Admissions (less MI), Asthma Emergency Hospital Admissions and Emergency Room Visits, Asthma Hospital Admissions, Hospital Admissions for Respiratory Diseases, combined with the non-accident mortality rate per zip code. For San Francisco, based on 2009-2011 health records, the zip codes in the worst quintile of Bay Area health vulnerability scores are 94102, 94103, 94105, 94124, and 94130. In updates to the Rules and Regulations, the Director may modify the methodology to identify Health Vulnerable Locations as required to ensure the Air Pollutant Exposure Zone Map is consistent with current scientific evidence.

(2) The criteria for creating and updating the Air Pollutant Exposure Zone Map and the models underlying this map shall include, but not be limited to:

(A) Identification of parcels with lifetime excess cancer risk due to air pollution greater than 100 cases per million population.

(B) Identification of parcels in Health Vulnerable Locations with lifetime excess cancer risk due to air pollution greater than 90 cases per million population.

(C) Identification of parcels where PM_{2.5} concentrations are greater than 10 µg/m³ (including ambient levels).

(D) Identification of parcels in Health Vulnerable Locations where PM_{2.5} concentrations are greater than 9 µg/m³ (including ambient levels).

(E) Identification of parcels within 500 feet of any Freeway, if those locations were not otherwise captured by modeling estimates.

(F) New research findings, particularly quantification of risk, that change the Director's knowledge of how particulate matter and any other air pollutants affect public health.

(3) Required performance standards for Enhanced Ventilation Proposals must include the following minimum criteria:

(A) Location of air intake for HVAC (Heating, Ventilation and Air Conditioning systems) away from air pollution sources;

(B) Specification of filtration certified by the ASHRAE capable of achieving protection from particulate matter (PM_{2.5}) equivalent to that associated with a MERV 13 filtration (as defined by ASHRAE standard 52.2).

- (4) Additional criteria for Enhanced Ventilation Proposals may include the following project design information:
- (A) Number of air exchanges per hour of outside filtered air;
 - (B) Building materials and/or design that limit unfiltered infiltration of outside air, such as air sealing or maintenance of positive pressure within the building interior;
 - (C) Location of operable windows oriented away from air pollutant sources, to the extent feasible;
 - (D) Other building design criteria that may reduce air pollution exposure to residents;
 - (E) Other combinations of technologies and designs to achieve the goals of this Article.
- (5) Certification and/or licensing requirements for the persons who prepare the Enhanced Ventilation Proposals pursuant to Section 3807. The Enhanced Ventilation Proposal must be prepared by, or under the responsible charge of a person who is authorized by California Business and Professions Code Sections 6700-6799 (Professional Engineers Act), or any successor provisions, to design mechanical ventilation systems that meet the requirements of this Article 38 and San Francisco Building Code Section 1203.5 and either:
- (A) a licensed mechanical engineer, or
 - (B) an individual authorized by California Business and Professions Code Sections 6700-6799 to design mechanical ventilation systems that meet the requirements of this Article 38 and San Francisco Building Code Section 1203.5.
- (6) Minimum criteria for maintenance and disclosure, including but not limited to:
- (A) Minimum standards for proper maintenance, and
 - (B) Disclosure to buyers, lessees and renters that the building is located in an area with substantial concentrations of air pollutants, and that the building includes an enhanced ventilation system information about the proper use of the installed enhanced ventilation system.
- (e) The Director may specify additional or alternative equivalents as justified by accepted research including:
- (1) addition or substitution of risk factor criteria;
 - (2) inclusion of other pollutants such as Nitrogen Dioxide.
- (f) Within Health Vulnerable Locations, the Director shall specify more protective requirements in the Air Pollutant Exposure Zones.
- (g) The Director may grant variances to this Article 38, on a case-by-case basis.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

CODIFICATION NOTE

1. Blank in Ord. [224-14](#); ordinance number inserted by the codifier.

SEC. 3810. MAINTENANCE AND DISCLOSURE REQUIREMENTS.

- (a) The ventilation systems installed pursuant to Section 3807 shall be properly maintained, following standard practices, and as specified by the manufacturer.
- (b) Documentation of the installation and/or maintenance of the enhanced ventilation systems shall be preserved for five years after installation.
- (c) Failure to properly maintain the enhanced ventilation systems is subject to enforcement and possible penalties under the Health Code Article 11, Nuisances, or other applicable sections.
- (d) Disclosure to buyers, lessees and renters shall be made in accordance with Rules and Regulations as specified in Section 3809(d)(6).

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3811. FEES.

- (a) Review and approval of an Enhanced Ventilation Proposal . . . \$984.00
- (b) Additional consultation, document review or inspection . . . \$225.00 per hour

(Added by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3811 added by Ord. 281-08, File No. 080934, 12/5/2008; redesignated as Sec. 3812 by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3812. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

(Added as Sec. 3811 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3812 added by Ord. 281-08, File No. 080934, 12/5/2008; redesignated as Sec. 3813 by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3813. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Article 38 is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The Board of Supervisors hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause, or phrase not declared invalid or

unconstitutional without regard to whether any portion of this Article would be subsequently declared invalid or unconstitutional.

(Added as Sec. 3812 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3813 added by Ord. 281-08, File No. 080934, 12/5/2008; redesignated as Sec. 3814 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3814. UNDERTAKING FOR THE GENERAL WELFARE.

In adopting and implementing this Article 38, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing in 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 as Sec. 3813 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)