

SOUTH SAN FRANCISCO MUNICIPAL CODE

Chapter 8.50 REGULATION OF SMOKING

8.50.010 Purpose and intent.

It is the intent of this chapter to provide individuals with a reasonable degree of protection from involuntary exposure to tobacco smoke by prohibiting smoking in certain specified areas. The health, safety, and general welfare of the residents of, persons employed in, and persons who frequent the city would be benefitted by the regulation of smoking, particularly in enclosed places, since numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and since reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard. (Ord. 1129 § 1, 1993: Ord. 1010 § 1 (part), 1987)

8.50.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Bar" means any area or a room utilized primarily for the sale of intoxicating liquors or consumption by guests on the premises and in which the sale of food and the provision of entertainment is merely incidental to the sale of intoxicating liquors.

"Business establishment", as used in this chapter, shall not include any facility owned, operated, leased, rented or under the direct or indirect control of the city.

"Dining area" means an enclosed area containing tables or counters upon which meals are served.

"Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person who employs the services of an individual person.

"Enclosed" means closed in by a roof and by walls on at least three sides.

"Open to the public" means available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to:

1. Conference and classrooms;

2. Employee cafeterias;
3. Employee lounges;
4. Hallways;
5. Work areas.

A private residence is not a place of employment, unless it is used as a child care or health care facility, and the dining area of a restaurant is not a place of employment.

"Restaurant" means any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club (including veterans' club), boardinghouse, or guesthouse, the primary function of which is to give, sell or offer for sale, food to the public, guests, patrons, or employees, except that the term "restaurant" shall not include a tavern or a cocktail lounge if the tavern or cocktail lounge is a bar as defined in this section.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.

"Semiprivate room" means a room in a public or private health care facility containing two beds for patients of the facility.

"Smoke" or "smoking" means and includes inhaling or exhaling upon, burning or carrying any lighted smoking equipment for tobacco, or any other plant or product used for the personal habit commonly known as smoking.

"Smoke-free" means the absence of visible tobacco smoke and/or tobacco smoke odor. In determining the presence or absence of visible tobacco smoke and/or tobacco smoke odor, consideration shall be given, but not necessarily limited, to the following factors:

1. Observations of third parties such as co-workers and enforcing city employees, as well as the affected employee;
2. The ability to identify a specific source of tobacco smoke giving rise to the complaint;
3. The proximity of the source of tobacco smoke to the affected employee; and
4. The configuration and location of the work areas as well as the presence of mechanical or other devices designed to prevent the visibility or odor of tobacco smoke.

"Smoking victim" means any person present in a place where smoking is prohibited pursuant to Section 8.50.030 at the time that smoking occurs in such a place. (Ord. 1129 § 2, 1993; Ord. 1010 § 1 (part), 1987)

8.50.030 Smoking prohibited.

Smoking shall be prohibited in the following places within the city:

(a) Restaurants.

(1) Restaurants for Fifty or More Persons. For restaurants whose occupied capacity is fifty or more persons, a policy for providing nonsmoking areas shall be devised. At the request of a patron, the patron shall be seated in a nonsmoking area if at all possible.

(2) Restaurants for Fewer than Fifty Persons. Any restaurant whose occupied capacity is fewer than fifty persons may either prohibit smoking in the entire area or permit smoking. Notice of the operative policy of such restaurant must be posted at all entrances to such restaurant.

(3) Outdoor Eating Areas. Sixty percent of outdoor eating areas for all eating establishments shall be reserved for nonsmokers. Smoking is prohibited and unlawful in such areas.

(b) City Facilities. Smoking is prohibited in all enclosed areas of any building or facility owned, leased, operated, rented or under the direct or indirect control of the city.

(c) City Vehicles. Smoking is prohibited in all city-owned, leased and/or controlled vehicles.

(d) Elevators. Smoking is prohibited in elevators in buildings generally open to and used by the public, including elevators in apartment buildings, irrespective of the number of living units in such apartment buildings.

(e) Hospitals and Health Care Facilities. Smoking is prohibited in semiprivate rooms, wards, waiting rooms, lobbies and public hallways of every public and private health care facility including, but not limited to, hospitals, clinics and physicians' and dentists' offices; provided, however, that smoking may be permitted in a semiprivate room when both patients assigned to such room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted; and provided, further, that this prohibition does not prevent a facility from establishing separate waiting area(s) in which smoking is permitted so long as the smoking area(s) contain no more than fifty percent of the waiting room space in the facility. The exceptions set forth in Section 8.50.040(d) shall not apply to this section.

(f) Places of Public Assembly. Smoking is prohibited in hearing rooms or places of public assembly in which the business of the city or any of its boards or commissions is conducted.

(g) Theaters, Auditoriums. Smoking is prohibited within all parts of any building which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance, which parts

are open to the public, and within any room, hall or auditorium that is occasionally used for exhibiting any motion picture, stage drama, dance, musical performance; or other similar performance during the time that the room, hall or auditorium is open to the public for such exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production; and provided, further, that smoking may be permitted in a designated portion of a lobby containing no more than fifty percent of the total lobby area in the building.

(h) Museums, Libraries, Galleries. Smoking is prohibited in public parts of museums, libraries and galleries; provided, however, that smoking may be permitted in a designated portion of the reading areas in a library if the designated smoking area contains no more than twenty percent of the seating area in the library.

(i) Hotels, Motels, Resorts. Smoking is prohibited in all enclosed parts of hotels, motels and resorts open to the general public, including, but not limited to, registration areas, lobbies, hallways and conference rooms: provided, however, that smoking may be permitted in those rooms rented to guests; and provided, further, that smoking may be permitted in a designated contiguous portion of a lobby which contains no more than fifty percent of the total lobby area in the establishment.

(j) Public Transit. Smoking is prohibited in buses, trains, taxicabs and other means of transit while operating within the boundaries of the city, and in ticket areas and waiting rooms of transit terminals and stations; provided, however, this prohibition does not prevent the establishment of separate waiting area(s) in a terminal or station in which smoking is permitted so long as the smoking area(s) contain no more than fifty percent of the waiting room space in the station or terminal; and provided, further, that smoking shall not be prohibited in taxicabs when not carrying passengers for hire.

(k) Gymnasiums, Fieldhouses, Stadiums, Sports Arenas and Outdoor Theaters. Smoking is prohibited in public areas of gymnasiums, field houses, stadiums, sports arenas, and outdoor theaters; provided, however, that smoking may be permitted in designated portions of an outdoor stadium or outdoor theater containing no more than fifty percent of the total seating capacity of the stadium or theater and so located as to afford seating of no more than equal quality to the seating in the nonsmoking portions of the stadium or theater.

(l) Business Establishments.

(1) Smoking is prohibited within all areas open to the public in business establishments dealing in goods or services and not otherwise mentioned in this section, including, but not limited to, food and grocery stores, drugstores, supermarkets, automobile showrooms, banks, savings and loan offices, and insurance offices, provided that restaurants are not included in this provision.

(2) Notwithstanding subsection (1) above, smoking shall be permitted in the corridor and walkway areas between individual business establishments, in covered shopping malls, unless otherwise posted as "No Smoking" by the operators of such malls.

(3) Areas "open to the public" wherein smoking is prohibited pursuant to subsection (1) above, shall not be deemed include private offices of individual businesspersons or professionals, to which clients are admitted only by specific invitation or appointment.

(m) Designated Nonsmoking Areas. Smoking is prohibited in any area of any business, governmental or charitable establishment which has been designated by the owner or person in charge of such establishment as a nonsmoking area and marked with a nonsmoking sign or signs. The exception set forth in Section 8.50.040(d) shall not apply to this subsection.

(n) Public Restrooms. Smoking is prohibited and is unlawful in public restrooms.

(o) Indoor Service Lines. Smoking is prohibited and is unlawful in indoor service lines where more than one person is giving or receiving services of any kind, with the exception of indoor service lines in restaurants with seating size of fifty persons or less, and for which the proprietor has chosen to allow smoking in all seating areas of that restaurant pursuant to Section 8.50.030(a)(2) of this chapter.

(p) Facilities Principally Attended by Minors. Smoking is prohibited in all facilities with enclosed group areas in which minors principally are present, during the time minors are present, unless the facility is governed by state or federal law to the contrary. (Ord. 1129 § 3, 1993; Ord. 1096 § 1, 1991; Ord. 1010 § 1 (part), 1987)

8.50.040 Smoking permitted.

Smoking shall not be prohibited in the following places within the city:

(a) Bars;

(b) Retail tobacco stores;

(c) An entire room or hall which is used for a private function which function is under the control of the sponsor of the function and not under the control of the owner or manager of the room or hall, but only while such room or hall is used for a private function. The fact that the owner or manager of the room or hall provides food or entertainment to the participants of a private function does not mean that the owner or manager has control of the function;

(d) Areas not generally open to the public;

(e) Any property owned or leased by county, state or federal governmental entities;

(f) Private residences, including private residences which may serve as a place of employment, except when used as a child care or a health care facility;

(g) Hotel and motel rooms rented to guests;

(h) A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by nonsmokers;

(i) Semiprivate rooms of health facilities occupied by one or more patients, all of whom are smokers who have requested in writing upon the health care facilities admissions forms to be placed in a room where smoking is permitted;

(j) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls a business may declare that entire business, or designated sections thereof, as a nonsmoking establishment.

(k) Nothing in this section shall be deemed to allow smoking in any building or facility owned, operated, leased, rented or under the direct or indirect control of the city. (Ord. 1129 § 4, 1993: Ord. 1010 § 1 (part), 1987)

8.50.050 Posting of signs.

Posting of signs shall be the responsibility of the owner, operator, manager or other person having control of any place generally open to the public where smoking is prohibited by this chapter.

(a) Except as provided in subsection (b) of this section or in facilities owned or leased by county, state, or federal governmental entities, "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every room, building or other place where smoking is regulated by this chapter, including but not limited to, all entrances, all restrooms and all elevators. Signs of equivalent size and character reading "Smoking Permitted" may be posted where legally applicable. Alternative means of notification (individual place cards, film clips, etc.) may be employed, provided they are equivalent to the

above-mentioned signs in their effect. Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium. In all motion picture theaters, illuminated "No Smoking" signs shall be installed so as to be readily visible from all seats and a "No Smoking" message shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture. All signs required by this chapter shall be posted within thirty days of the effective date of this chapter.

(b) Except in facilities owned or leased by county, state, or federal government entities, a conspicuous and clearly legible sign shall be posted at every public entrance to a restaurant indicating the policy of the restaurant with respect to whether it:

(1) Prohibits smoking throughout the dining area of the restaurant;
or

(2) Divides the dining area of the restaurant into smoking and nonsmoking sections.

(c) The sign used must state in characters of not less than one inch in height, "No Smoking Section", followed by one of the following:

(1) "Upon request"; or

(2) "X%", Where X is expressed as a percentage of the total number of seats in the dining area of the restaurant.

(d) In restaurants with both smoking and no smoking sections, individual signs or placards with either the words "No Smoking" or the international no smoking symbol must be placed on every table and counter in the no smoking section of the dining area.

(e) Any ashtray located in a no smoking area must have a sign conspicuously posted within one foot of the ashtray which conforms to the requirements of subsection (a) above. (Ord. 1010 § 1 (part), 1987)

8.50.060 Employee smoking policy.

Within 90 days of the effective date of this chapter, each employer shall adopt, implement, make known and maintain a written smoking policy which shall maintain as a minimum the following requirements:

(a) Prohibition of smoking in employer

1. Auditoriums
2. Classrooms
3. Conference and meeting rooms
4. Elevators
5. Hallways
6. Medical facilities
7. Restrooms

(b) Provision and maintenance of a separate and contiguous nonsmoking area of not less than two-thirds of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges or provision and maintenance of separate and equal sized cafeterias, lunchrooms and employee lounges for smoker and nonsmokers.

(c) Any employee in a place of employment shall be given the right to designate his or her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs. The policy adopted by the employer shall include a definition of the term immediate work area.

(d) In any dispute arising under the smoking policy, the rights of the nonsmoker shall be given precedence.

(e) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption, and at least yearly thereafter.

(f) All employers shall supply a written copy of the smoking policy to any prospective employee who so requests. Employers also shall furnish all signs required to implement the smoking policy for their business.

(g) Notwithstanding the provisions of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

(h) An employer who in good faith develops and promulgates a policy regarding smoking and nonsmoking in the workplace shall be deemed to be in compliance with this section, provided that a policy which knowingly omits the minimal elements called for by this chapter or which designates an entire work place as a smoking area shall not be deemed a good faith policy. (Ord. 1010 § 1 (part), 1987)

8.50.070 Modification to employee smoking policy.

(a) In the event that any nonsmoking employee finds that the employer's policy, as implemented for that particular employee, does not provide such employee with an adequately "smoke-free" environment in the employee's immediate work area, that employee, after attempting to resolve the matter with his or her immediate supervisor in a manner acceptable to both and finding no satisfactory solution, may make a written request to the employer to provide a "smoke-free" immediate work area.

In the event an affected employer has an established grievance procedure for resolving employer-employee disputes, any written grievance or notice submitted by an employee pursuant to that procedure shall suffice as the written notice required by this subsection and the time period designated in subsection (c) of this section shall commence with the filing of the notice. No separate written notice need be given pursuant to this section, it being the intent of this section to encourage the use of existing grievance procedures to resolve such disputes.

(b) Such request may be made at any time after the implementation of the employer's smoking policy as to that employee, and it shall be presented in writing to the employee's immediate supervisor.

(c) Within sixty days of receiving a written request, the employer shall provide that employee with a smoke-free environment in his or her immediate work area. The employer may choose the manner in which it meets the

employee's request and may use, at employer's option, any one or more measures including, but not limited to, reassigning the employee to a different work area, installing appropriate air filtering or ventilation systems, providing the employee with an enclosed work space, prohibiting smoking by other employees whose ambient smoke enters the employee's immediate work area, or other appropriate measures.

(d) Appropriate instructions and signs shall be posted within sixty days to implement the employer's modified plan as to the protesting employee.

(e) If the source of the offending smoke is located on premises outside of the control of the employer, the employer shall not be required to make structural or similar changes requiring significant expenditure of funds in order to provide a smoke-free immediate work area. (Ord. 1010 § 1 (part), 1987)

8.50.080 Exceptions to smoking policy requirement.

Notwithstanding any of the requirements of the foregoing Sections 8.50.060 and 8.50.070 where an employee's duties require such employee to enter or to work in bars, retail tobacco stores, or any of the other areas set forth in Section 8.50.040(a) through (c), and (e) through (i) inclusive, or in those portions of eating establishments where smoking is permitted under this chapter, the employer shall not be required to provide a smoking policy for such areas. (Ord. 1010 § 1 (part), 1987)

8.50.090 Unlawful acts.

(a) It is unlawful for any person to smoke in a place within the city where smoking is prohibited.

(b) It is unlawful for any person who owns, manages or otherwise controls the use of any premises subject to the prohibition of this chapter to fail to post signs as required by this chapter. (Ord. 1010 § 1 (part), 1987)

8.50.100 Nondiscrimination.

No person shall discharge, refuse to hire, or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter. (Ord. 1010 § 1 (part), 1987)

8.50.110 Waivers.

The owner or manager of any establishment affected by Section 8.50.030 may apply for a waiver from the provisions of that section by means of an administrative hearing before the city manager, or the manager's designated representative, which shall be held within a reasonable time after receipt by the city manager or the designated representative of a written request therefor. The written request shall be accompanied by an application for waiver fee, in an amount to be established by resolution of the City Council. The applicant shall furnish in support of such waiver information on the type of business or establishment, the area of concern, the average number of members of the public which frequent it, and any other relevant information requested by the city. The city manager, or the manager's designated representative may, at his or her discretion, grant a waiver of the requirements of this chapter upon a finding that there are not sufficient members of the general public visiting such establishment to warrant the regulation of smoking therein. The decision of the city manager shall be final. (Ord. 1010 § 1 (part), 1987)

8.50.120 Violations.

(a) Any owner, manager, operator, employer or employee of any establishment regulated by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.

(b) Any violation of this chapter shall be and is hereby declared to be a public nuisance, and may be abated as such through appropriate civil proceedings brought by the city or by a private individual.

(c) Any person violating any of the provisions of this chapter shall be guilty of an infraction. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. (Ord. 1010 § 1 (part), 1987)