

1 [Health Code - Smoke-free Places]

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3 **Ordinance amending the Health Code to prohibit smoking in outdoor patios of bars and**  
4 **taverns; and eliminating exceptions allowing indoor smoking in bars with no**  
5 **employees, bars with historically compliant semi-enclosed smoking rooms, and hotel**  
6 **rooms, to conform to provisions of California law.**

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8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

12

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

14

15 Section 1. Findings.

16 (a) According to the U.S. Surgeon General, Centers for Disease Control and  
17 Prevention, and the World Health Organization, there is no safe level of exposure to  
18 secondhand smoke.

19 (b) Tobacco kills 480,000 people in the United States every year, including 41,000  
20 from secondhand smoke exposure. Tobacco use is the number one preventable cause of  
21 death in the country.

22 (c) When the City and County of San Francisco enacted legislation in 1994 to  
23 protect workers from exposure to secondhand smoke, smoke-free air laws were viewed as  
24 highly controversial and opponents warned that they would cause many businesses to close,  
25 including bars and hotels. To address those fears, the City's groundbreaking smoke-free air

1 law included exceptions for bars with no employees, bars that had semi-enclosed smoking  
2 rooms, 25% of a tourist hotel’s rooms, and the outdoor areas of bars and taverns.

3 (d) In 2016, the California Legislature enacted legislation expanding the definition of  
4 “enclosed places of employment” to include owner-operated bars and, later, in 2024, to  
5 include hotel guest rooms. As a result, state law now prohibits smoking indoors in hotels and  
6 bars where it had previously been permitted under San Francisco’s local law.

7 (e) In addition, since the City enacted its first smoke-free air law, researchers have  
8 more definitively established the harms of exposure to secondhand smoke in outdoor spaces,  
9 underscoring the need to broaden our local smokefree air law to protect individuals working  
10 outdoors in bar and tavern patios.

11 (1) The World Health Organization recommends that individuals should be  
12 exposed to no more than 15 micrograms per cubic meter of fine particulate matter, averaged  
13 over 24 hours. Exposure to secondhand smoke, even in an outdoor space, can exceed this  
14 limit for workers over the course of a shift.

15 (2) Air quality measurements taken by UCSF researchers in San Francisco  
16 bar patios in 2022 determined that six of the nine patios visited had peak readings in the EPA  
17 “unhealthy” air quality range, or higher. One patio, where several patrons were smoking  
18 cigars, registered in the “hazardous” range.

19 (3) In reliance on this research, at least 400 cities and counties nationwide,  
20 including San Jose, Oakland, and more than 50 other Bay Area cities, have ordinances  
21 prohibiting smoking in bar patios.

22 (f) Research has firmly established that smoke-free air laws do not result in loss of  
23 business or employment. After California law required bar interiors to become smoke-free,  
24 bar revenues increased.

25 (g) Smoke-free bar policies have been found to support smoking cessation,

1 especially in the LGBTQ community.

2 (1) Nearly 70% of smokers want to quit. About half of smokers try to quit  
3 every year. Smoking on bar patios makes it harder to quit, as exposure to secondhand smoke  
4 and thirdhand smoke is linked to relapse.

5 (2) A survey of more than 1,000 LGBTQ Californians with a history of  
6 tobacco use found that 65% believed that smoke-free outdoor bars could help or would have  
7 helped them quit, including a greater portion of trans people and former smokers.

8 (3) More than two thirds of LGBTQ California adults are exposed to  
9 secondhand tobacco smoke, which is 25% more than the non-LGBTQ adults and LGBTQ  
10 adults in California are 60% more likely to be current tobacco users than non-LGBTQ adults.

11 (f) The intent of this ordinance is to broaden the City’s smokefree air laws to  
12 provide protections consistent with the protections offered under state law, and to go beyond  
13 that standard by also protecting individuals who work outdoors in bars and taverns from  
14 exposure to secondhand smoke.

15

16 Section 2. Article 19F of the Health Code is hereby amended by revising  
17 Sections 1009.21,1009.22, and 1009.23, to read as follows:

18

19 **SEC. 1009.21. DEFINITIONS.**

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

24

\* \* \* \*

25 (m) “Outdoor patio” means a side or rear outside area of a bar or tavern or restaurant

1 that has no walls or ceiling and is open air. ~~Outdoor dining areas of restaurants are not considered~~  
2 ~~outdoor patios when food is no longer served in the dining area, even if there is a bar located outside.~~

3 \* \* \* \*

4  
5 **SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES,**  
6 **CERTAIN UNENCLOSED AREAS, ENCLOSED STRUCTURES CONTAINING CERTAIN**  
7 **USES, AND SPORTS STADIUMS.**

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

12 \* \* \* \*

13 (13) Restaurants, including Outdoor Patios;

14 (14) Bars and Taverns, including Outdoor Patios ~~except for historically compliant semi-~~  
15 ~~enclosed smoking rooms, the portion of an outdoor patio at least 10 feet away from the entry, exit, or~~  
16 ~~operable window of the bar or tavern, or as specified in Sections 1009.23(c) or 1009.23(d);~~

17 \* \* \* \*

18  
19 **SEC. 1009.23. EXCEPTIONS.**

20 The following places shall not be subject to this Article 19F:

21 ~~—(a) Tourist lodging facility room accommodations designated as smoking rooms, provided~~  
22 ~~that the owners or managers of tourist lodging facilities shall designate at least 75 percent of the guest~~  
23 ~~rooms in tourist lodging facilities as smoke free. The owners or managers of tourist lodging facilities~~  
24 ~~must permanently designate particular guest rooms as smoke free and ashtrays and matches are to be~~  
25 ~~permanently removed from such smoke free rooms. "No smoking" signage shall be displayed in smoke~~

1 *free rooms. Where possible, designated smoke free rooms shall not be located on the same floor as*  
2 *smoking rooms. It is recommended that smoking be relegated to the top floor with at least 50 percent of*  
3 *the rooms on the top floor designated as smoke free. Owners and managers of tourist lodging facilities*  
4 *may designate 100% of guest rooms as smoke free; if such 100% smoke free designation is made, "no*  
5 *smoking" signage shall only be required in the common areas on each floor of such tourist lodging*  
6 *facilities.*

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

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

25 ~~—(d) Bars and Taverns located in commercial buildings that submit to the Director within~~

1 ~~three months of the effective date of this ordinance an application and all documents required by the~~  
2 ~~Director to demonstrate that an area in the establishment is a historically compliant semi-enclosed~~  
3 ~~smoking room and qualified as such as of December 31, 2009. If the Director denies the application~~  
4 ~~because the Bar or Tavern does not comply with the above requirements, the Director may allow the~~  
5 ~~establishments to make alterations to comply with this requirement; if the Bar or Tavern completes the~~  
6 ~~alterations to the Director's satisfaction, the Director may approve the application. If the Director~~  
7 ~~approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in~~  
8 ~~the historically compliant semi-enclosed smoking room. This exemption status is nontransferable and~~  
9 ~~immediately expires if 1) there is a change in the ownership interest(s) of the Bar or Tavern, 2) the~~  
10 ~~room no longer meets the definition of historically compliant semi-enclosed smoking room, 3) there are~~  
11 ~~structural alterations made to the smoking room after December 31, 2009 not approved by the~~  
12 ~~Director, or 4) the establishment is no longer located in a commercial building. If the Director~~  
13 ~~approves the application under the criteria of this subsection, the Bar or Tavern may allow smoking in~~  
14 ~~the historically compliant semi-enclosed smoking room but must immediately notify the Director of any~~  
15 ~~changes that would disqualify the establishment from this exemption. For purposes of this subsection,~~  
16 ~~the term "change in ownership interest(s)" means the aggregate change of 50 percent or more of the~~  
17 ~~ownership of the business within a 12-month period.~~

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

1 request.

2 (~~f~~c) Medicinal Cannabis Retailers, Cannabis Microbusinesses, and Cannabis  
3 Retailers that have received and maintain:

4 (1) A Cannabis Business Permit issued by the Director of the Office of Cannabis  
5 under Article 16 of the Police Code; and

6 (2) A Cannabis Consumption Permit that authorizes the smoking of cannabis,  
7 issued by the Director of Health under Article 8A of the Health Code, unless the smoking of  
8 cannabis is authorized under subsection (g) of Section 8A.4, pending the approval or denial of  
9 an application for such permit.

10

11 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
15 additions, and Board amendment deletions in accordance with the “Note” that appears under  
16 the official title of the ordinance.

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18 Section 4. Undertaking for the General Welfare. In enacting and implementing this  
19 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
20 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
21 is liable in money damages to any person who claims that such breach proximately caused  
22 injury.

23

24 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of  
25 this ordinance, or any application thereof to any person or circumstance, is held to be invalid

1 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not  
2 affect the validity of the remaining portions or applications of the ordinance. The Board of  
3 Supervisors hereby declares that it would have passed this ordinance and each and every  
4 section, subsection, sentence, clause, phrase, and word not declared invalid or  
5 unconstitutional without regard to whether any other portion of this ordinance or application  
6 thereof would be subsequently declared invalid or unconstitutional.

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8 Section 6. Effective Date. This ordinance shall become effective on the 31st day after  
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
11 of Supervisors overrides the Mayor's veto of the ordinance.

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14 APPROVED AS TO FORM:  
15 DAVID CHIU, City Attorney

16 By: /s/ \_\_\_\_\_  
17 ANNE PEARSON  
Deputy City Attorney

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