

BOARD of SUPERVISORS



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MEMORANDUM

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448
FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee
DATE: April 15, 2026
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 260361

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

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Office of Chair Melgar
Kerry Birnbach, Senior Policy Analyst/Commission Secretary

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

___ No Comment
___ Recommendation Attached

Chairperson, Small Business Commission

1 [Health Code - Smoke-free Places]

2

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.**

7

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

1 (~~f~~) Medicinal Cannabis Retailers, Cannabis Microbusinesses, and Cannabis

2 Retailers that have received and maintain:

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

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

9
10 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the “Note” that appears under
15 the official title of the ordinance.

16
17 Section 4. Undertaking for the General Welfare. In enacting and implementing this
18 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
19 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
20 is liable in money damages to any person who claims that such breach proximately caused
21 injury.

22
23 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of
24 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
25 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not

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

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

11
12
13 APPROVED AS TO FORM:
14 DAVID CHIU, City Attorney

15 By: /s/ _____
16 ANNE PEARSON
17 Deputy City Attorney
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LEGISLATIVE DIGEST

[Health Code - Smoke-free Places]

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

Existing Law

State law prohibits smoking in all enclosed places of employment and owner-operated businesses, with limited exceptions. California Labor Section 6404.5. This law applies statewide, and preempts local laws that purport to allow smoking in places where it is prohibited under state law. Notably, state law prohibits smoking in 100% of hotels, motels, or other transient lodging facilities and in owner-operated business regardless of the number of employees or the existence of an enclosed area for smoking.

Currently, Article 19F of the Health Code prohibits smoking in certain enclosed spaces, including, but not limited to, facilities owned or leased by the City, polling places, educational facilities, health facilities, and certain business establishments including most restaurants, bars, and taverns. Current local law also bans smoking in certain outdoor spaces, including sports arenas and farmers markets.

Although current local law purports to exempt the following categories of businesses from the smoking prohibition, these businesses are subject to the state ban on smoking:

- up to 25% of guest rooms in tourist lodging facilities;
- certain owner-operated bars and taverns that have no employees; and
- certain bars and taverns with historically compliant semi-enclosed smoking rooms.

Current local law does not prohibit smoking in outdoor patios at bars or taverns.

Amendments to Current Law

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

- prohibit smoking in the outdoor patios of bars and taverns;
- Conform to state law by eliminating the preempted exceptions for up to 25% of tourist lodging facility guest rooms; 2) owner-operated bars and taverns that have no

employees; and 3) bars and taverns with historically compliant semi-enclosed smoking rooms.

Background Information

When Article 19F of the Health Code was first enacted, its restrictions were more stringent than state law. Since then, state law that has caught exceeded the protections against secondhand smoke in certain indoor spaces that the City previously enacted, particularly with respect to entirely prohibiting smoking in tourist lodging facilities, and bars and taverns irrespective of the number of employees they have.

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: