

REVISED LEGISLATIVE DIGEST

(Substituted, May 5, 2026)

[Health Code - Smoke-free Places]

Ordinance amending the Health Code to prohibit smoking in outdoor patios of bars and taverns; eliminate 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semi-enclosed smoking rooms, and hotel rooms, to conform to provisions of California law; and repeal suspended and superseded provisions regulating smoking in certain locations.

Existing Law

State law prohibits smoking in all enclosed places of employment and owner-operated businesses, with limited exceptions. California Labor Code 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.

Current local law defines "Tobacco Sales" in Article 19H of the Health Code to include the display of tobacco products; however, the storage or display of images of tobacco products for purchase are not included in the definition.

Amendments to Current Law

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

- 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.
- Revise the definition of “Tobacco Sales” in Section 19H.2 to include the storage or display of images of tobacco products for purchase.
- Repeal Articles of the Health Code that have already been suspended and superseded.

Background Information

This ordinance was introduced on May 5, 2026 as a substitute for the ordinance in Board file No. 260361.

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 up to and in some respects 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.

Article 19F supersedes and suspends earlier local smoking regulations codified in Articles 19A, 19B, 19C, and 19E, which restricted but did not necessarily prohibit smoking in various indoor spaces. Article 19 similarly restricts some indoor smoking without prohibiting it. When Article 19F was enacted in 1994, it suspended rather than repealed Articles 19A, 19B, 19C, and 19E in case the legality of Article 19F was successfully challenged. The legality of smokefree air laws is now well established, and it is therefore appropriate to repeal the less restrictive regulations codified in Articles 19, 19A, 19B, 19C, and 19E.

Updating the definition of “Tobacco Sales” in Section 19H.2 of the Health Code to include the storage or display of images of tobacco products for purchase as part of the definition is intended to enable efficient enforcement to the permit requirement established in Article 19H.