

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.