

1 [Amending Health Code Article 8 – Food Preparation and Service Establishment.]

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3 **Ordinance amending San Francisco Health Code Sections 451, 452, 456.4, 456.5,**
4 **deleting Health Code Section 455, and amending San Francisco Business and Tax**
5 **Regulations Code Section 249.1 to include definition for licensed health care facilities,**
6 **clarify the definition for hospital kitchen, update definitions to be consistent with the**
7 **California Retail Food Code; add a fee for licensed health care facilities; and add lien**
8 **procedures for enforcing monetary penalties.**

9 Note: Additions are *single-underline italics Times New Roman*;
10 deletions are *strikethrough italics Times New Roman*.
11 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. The San Francisco Health Code is hereby amended by amending Sections
14 451, 452, 456.4, 456.5, and deleting Section 455, to read as follows:

15 **SEC. 451. FOOD PREPARATION AND SERVICE ESTABLISHMENT.**

16 (a) "Food preparation and service establishment" as defined in this Section shall
17 mean and include any restaurant, itinerant restaurant, guest house, boardinghouse, special
18 events, school food concessions, bar or tavern, take-out establishment, fast food
19 establishment, catering facility, temporary facility, food demonstration, commissary, pushcart,
20 stadium concession, vending machine, bed and breakfast establishment, private school
21 cafeteria, ~~and~~ hospital kitchen, *and licensed health care facility*, as those terms are defined
22 herein.

23 (b) "Restaurant" means any coffee shop, cafeteria, short-order cafe, luncheonette,
24 cocktail lounge, sandwich stand, soda fountain, public school cafeteria or eating
25 establishment, in-plant or employee eating establishment and any other eating establishment,

1 organization, club, including Veterans' Club, boardinghouse, bed and breakfast
2 establishments, guest house, caterer, which gives, sells or offers for sale, food to the public,
3 guests, patrons, or employees as well as kitchens or other food preparation areas in which
4 food is prepared on the premises for serving or consumption on or off the premises, and
5 requires no further preparation and also includes manufacturers of perishable food products
6 that prepare food on the premises for sale directly to the public. The term "restaurant" shall
7 not include itinerant restaurants, cooperative arrangements made by employees who
8 purchase food or beverages for their own consumption and where no employee is assigned
9 full time to care for or operate equipment used in such arrangement, or private homes; nor
10 shall the term "restaurant" include churches, church societies, private clubs or other nonprofit
11 associations of a religious, philanthropic, civic improvement, social, political, or educational
12 nature, which purchase food, food products, or beverages, or which receive donations of food,
13 food products, or beverages for service without charge to their members, or for service or sale
14 at a reasonable charge to their members or to the general public at occasional fundraising
15 events, for consumption on or off the premises at which the food, food products, or beverages
16 are served or sold, if the service or sale of such food, food products or beverages does not
17 constitute a primary purpose or function of the club or association, and if no employee or
18 member is assigned full-time to care for or operate equipment used in such arrangements.

19 (c) "Itinerant restaurant" means any restaurant, operating from temporary facility, cart
20 or vehicle, except those peddler wagons used for peddling as defined in Section 132(a) and
21 (b) of Part III of the San Francisco Municipal Code, serving, offering for sale, selling or giving
22 away food or beverage, and includes, but is not limited to, facility or vehicle where only
23 wrapped sandwiches or other wrapped and packaged, ready-to-eat foods are served, and any
24 mobile unit on which food is prepared and served.

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1 (d) "Guest house" means any building or portion thereof occupied or intended,
2 arranged, or designed for occupation by 35 or more guests where sleeping rooms and meals
3 are provided to the guests for compensation and shall include "guest house," "residence
4 club," "lodge," "dormitory," "residence cooperative" and any of its variants.

5 (e) "Boardinghouse" shall mean any building or portion thereof occupied or intended,
6 arranged or designed for occupation by six or more but less than 35 guests where sleeping
7 rooms and meals are provided to the guests for compensation and includes all private
8 institutional type homes where inspection is made by the San Francisco Department of Public
9 Health.

10 (f) The term "owner" or "owners" as used herein, shall mean those persons,
11 partnerships, or corporations who are financially interested in the operation of a food
12 preparation and service establishment.

13 (g) An "operator" as used herein shall mean any person engaged in the dispensing of
14 or in assisting in the preparation of food, or a person otherwise employed in a food
15 preparation and service establishment.

16 (h) "Director" as used herein, shall mean the "Director of Public Health of the City and
17 County of San Francisco;" *or his or her designee.* ~~and~~ "Inspectors" shall mean the "Inspectors of
18 the Department of Public Health," administered by said Director. The Director shall be
19 responsible for the administration and enforcement of Sections 451 to 456.5454, inclusive, of
20 this Article and the rules and regulations relating thereto. The Director shall, after a public
21 hearing, prescribe the rules and regulations relating thereto. Said rules and regulations shall
22 be issued in pamphlet form. All such food preparation and service establishments shall be
23 operated, conducted and maintained in accordance therewith.

1 (i) "Special events" means any organized collection of food purveyors operating
2 individually or collaboratively out of approved temporary or mobile food facilities at a fixed
3 location for a period of time not to exceed 25 days in a 90-day period in conjunction with a
4 single, weekly, or monthly community event as defined in the California Health and Safety
5 Code Section ~~113755~~~~113895~~(b).

6 (j) "School food concessions" means any food preparation, food service or food
7 products intended for consumption by students attending or participating in activities within a
8 school facility.

9 (k) "Bar or tavern" shall mean any food preparation and service establishment which
10 primarily prepares and/or serves alcoholic beverages.

11 (l) "Take-out establishment" shall mean any food preparation and service
12 establishment which primarily prepares food for consumption off premises.

13 (m) "Catering facility" shall mean any food preparation and service establishment
14 which prepares food on a contractual basis within a fixed location for service at another
15 location.

16 (n) "Temporary facility" shall mean any food preparation and service facility operating
17 out of temporary facilities approved by the Director of Public Health at a fixed location for a
18 period of time not to exceed 25 days in any 90-day period in conjunction with a single event or
19 celebration.

20 (o) "Food demonstrations" shall mean any food preparation and/or service facility
21 operating out of temporary facilities approved by the Director of Public Health for a period of
22 time not to exceed seven consecutive days for purposes of demonstrating food preparation or
23 equipment.

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1 (p) "Commissary" shall mean any food establishment in which food, containers,
2 equipment, or supplies are stored or handled for use in vehicles, mobile food preparation
3 units, food carts, or vending machines.

4 (q) "Stadium concession" shall mean any food preparation and/or service facility
5 operating within a stadium, arena, or auditorium with a seating capacity of 25,000 or more.

6 (r) "Vending machine" shall mean any self-service device, which upon insertion of
7 money or tokens, dispenses food without the necessity of replenishing the device between
8 each vending operation.

9 (s) "Private school cafeteria" shall mean any food preparation and service facility
10 serving food to faculty and/or students of a school not operated by the San Francisco Unified
11 School District.

12 (t) "Hospital kitchen" shall mean any food preparation and service facility operating
13 within a hospital that serves food to ~~patients~~, staff, or the general public, but not to patients.

14 (u) "Licensed Health Care Facility" shall mean all of the following health facilities with 16 or
15 more beds designated for the diagnosis, care, prevention, and treatment of human illness, physical or
16 mental, including convalescence, rehabilitation, and care during and after pregnancy, to which persons
17 are admitted for a 24-hour stay or longer:

18 (1) General Acute Care Hospital as defined in Cal. Health and Safety Code Section
19 1250 (a) or any successive statutes;

20 (2) Acute Psychiatric Hospital as defined in Cal. Health and Safety Code Section
21 1250 (b) or any successive statutes;

22 (3) Skilled Nursing Facility as defined in Cal. Health and Safety Code Section 1250
23 (c) or any successive statutes;

1 (4) Intermediate Care Facility as defined in Cal. Health and Safety Code Section
2 1250 (d) or any successive statutes;

3 (5) Special Hospital as defined in Cal. Health and Safety Code Section 1250 (f) or
4 any successive statutes;

5 (6) Intermediate Care Facility/Developmentally Disabled as defined in Cal. Health
6 and Safety Code Section 1250 (g) or any successive statutes;

7 (7) Chemical Dependency Recovery Facility as defined in Cal. Health and Safety
8 Code Section 1250.3 or any successive statutes;

9 Any of the facility types listed above that are operated by the State of California Departments of
10 Mental Health, Developmental Services, Corrections, or Youth Authority are not included in this
11 definition.

12 (v) "Bed and breakfast establishment" shall mean a "restricted food service
13 facility"~~transient occupancy establishment~~" as defined in Health and Safety Code Section
14 113893~~113870~~.

15 **SEC. 452. PERMIT REQUIRED APPLICATIONS FOR PERMITS, ETC.**

16 (a) It shall be unlawful to maintain or operate a food preparation and service
17 establishment within the City and County of San Francisco without having first obtained a
18 permit therefor issued and signed by the Department of Public Health. Any person,
19 partnership or corporation shall, before opening or operating a food preparation and service
20 establishment in the City and County of San Francisco, make an application for a permit in the
21 manner and upon a form provided by the Director, giving the information and particulars
22 required by the Director.

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1 (b) If the applicant for any permit under this Section is a corporation or other business
2 entity, the application shall contain the names of its principal officers and such other
3 particulars as the Director may require.

4 (c) Before granting the permit the Director shall investigate the facts stated in the
5 application and examine the premises to which the permit shall apply to assure that the
6 applicant is or will be in compliance with the laws, rules and regulations pertaining to the
7 proper operation of a food preparation and service establishment, including the California
8 Retail Food Code ~~Uniform Retail Food Facilities Law~~ and the Health Code of the City and County
9 of San Francisco. If the Director determines from its investigation and examination of the
10 premises that the applicant is not in compliance with any or all of the laws, rules and
11 regulations pertaining to the proper operation of a food preparation and service establishment
12 prior to the issuance of a permit, the Director shall allow the applicant a reasonable time within
13 which to comply. The applicant's refusal or neglect to comply in a timely fashion shall be
14 sufficient cause for the Director to deny the application.

15 (d) Any denial of an application for permit under this section shall be subject to an
16 appeal to the Board of Appeals.

17 (e) The permit (1) shall set forth the commercial uses permitted and shall be valid as
18 long as the annual permit fees are paid, or until suspended or revoked; (2) shall not be
19 transferable and shall be deemed revoked upon sale, transfer or assignment of the
20 commercial uses for which the permit was issued; and (3) shall at all times be displayed on
21 the premises.

22 (f) The permit may at any time be suspended or revoked for cause after a hearing by
23 the Department of Public Health. Any determination of suspension or revocation of a permit
24 for cause after a hearing shall be subject to appeal to the Board of Appeals. Upon suspension
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1 or revocation, the premises for which the permit was issued shall be posted with the order of
2 the Department.

3 (g) Applications for temporary permits to operate special events shall be submitted no
4 later than fourteen (14) calendar days prior to the commencement of the event along with the
5 applicable filing fees listed in Section 249.11(c) of the Business and Tax Regulations Code of
6 the City and County of San Francisco. If the application and/or filing fees are submitted less
7 than fourteen (14) calendar days prior to the commencement of the event, the applicant shall
8 pay an additional fifty percent (50%) of the filing fee as a late charge before the application
9 can be processed or approved. Applications and/or fees (including any late charges) which
10 are submitted seven (7) calendar days or less prior to the commencement of the event cannot
11 be processed.

12 ~~SEC. 455. PENALTY.~~

13 ~~Any person, firm, association, company or corporation violating any of the provisions of Sections 451~~
14 ~~to 454, inclusive, of this Article, shall be guilty of a misdemeanor and shall be punished by a fine of not~~
15 ~~less than \$10 and not in excess of \$500, or by imprisonment in the County Jail for a term not exceeding~~
16 ~~100 days, or by both such fine and imprisonment.~~

17 SEC. 456.4. PENALTIES AND ENFORCEMENT.

18 A. Criminal Penalties. Any person violating any of the provisions of Section 456 et
19 seq., inclusive, of this Article on more than three occasions within a twelve month period, or
20 violating Sections 451 through 454, inclusive, shall be guilty of a misdemeanor and shall be
21 punished by a fine of not less than \$10 and not in excess of \$500, or by imprisonment in the
22 County Jail for a term not exceeding 100 days, or by both such fine and imprisonment.

23 B. Administrative Penalties. Any firm, association, company or corporation violating any
24 of the provisions of Section 456 et seq., inclusive, of this Article shall be subject to
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1 administrative penalties imposed by the Director of Health. The Director may assess an
2 administrative penalty not exceeding fifty dollars (\$50) for a first violation; not exceeding one
3 hundred dollars (\$100) for a second violation; and not exceeding two hundred dollars (\$200)
4 for the third and each subsequent violation of Section 456 et seq.

5 C. Before imposing an administrative penalty, the Director must serve upon the firm,
6 association, company or corporation with a notice of initial determination. The notice shall
7 state the proposed administrative penalty and the basis for the Director's initial determination,
8 including the alleged acts or failures to act that constitute a basis for the administrative
9 penalty. The notice shall inform the firm, association, company or corporation that it has the
10 right to request administrative review of the penalty within fifteen (15) days of receipt of the
11 notice. The notice of initial determination may also require that the establishment cease and desist
12 from all food preparation and service activity.

13 D. If no request for review of the Director's decision is filed with the Health
14 Department within the appropriate period, the decision shall be deemed final and shall be
15 effective fifteen (15) days after the notice of initial determination was served on the firm,
16 association, company or corporation. The Director shall issue an Order imposing an
17 administrative penalty and serve it upon the party served with the notice of initial
18 determination. Payment of any administrative penalty is due within 30 days of service of the
19 Director's Order. Any administrative penalty assessed and received in an action brought
20 under this Article shall be paid to the Treasurer of the City and County of San Francisco. The
21 firm, association, company or corporation against whom an administrative penalty is imposed
22 also shall be liable for the costs and attorney's fees incurred by the City and County of San
23 Francisco in bringing any civil action to enforce the provisions of this section, including
24 obtaining a court order requiring payment of the administrative penalty.

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1 E. If the firm, association, company or corporation files a timely request for review of
2 the Director's decision with the Health Department, the Director shall conduct a hearing.
3 Within fifteen (15) days of receipt of the request, the Director shall notify the requestor of the
4 date, time, and place of the hearing. Such hearing shall be held no later than thirty (30) days
5 after the Director receives the request, unless time is extended by mutual agreement of the
6 affected parties. The Director may adopt rules and regulations regarding the hearing
7 procedures.

8 F. Following the hearing, the Director shall serve written notice of the Director's
9 decision on the firm, association, company or corporation. If the Director's decision is that the
10 firm, association, company or corporation must pay an administrative penalty, the notice of
11 decision shall state that the recipient has ten (10) days in which to pay the penalty. Any
12 administrative penalty assessed and received in an action brought under this Article shall be
13 paid to the Treasurer of the City and County of San Francisco. The firm, association, company
14 or corporation against whom an administrative penalty is imposed also shall be liable for the
15 costs and attorney's fees incurred by the City and County of San Francisco in bringing any
16 civil action to enforce the provisions of this section, including obtaining a court order requiring
17 payment of the administrative penalty.

18 G. The Director of Health may appoint a designee to perform the Director's functions
19 and responsibilities under Section 456.4.

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21 **SEC. 456.5. LIENS.**

22 (a) All final costs, fees, and administrative penalties assessed against a person for
23 violations of Section 451 through 456.4, inclusive, or the California Retail Food Code shall be an
24 obligation owed to the City by the person found to have violated these sections, and the owner of the

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1 property where the food preparation and service establishment is located, provided that both have been
2 given adequate notice of the alleged violation(s). Such obligation may be collected by means of the
3 imposition of a lien against the property of the owner of the property or the person or business against
4 whom the final administrative or civil penalty was assessed. The City shall mail to the owner of the
5 property and to the person against whom the final amount was assessed (if different from the owner of
6 the property) a notice of the amounts due and a warning that lien proceedings will be initiated against
7 the property if the amounts are not paid within 30 days after mailing of the notice.

8 (b) Liens shall be created and assessed in accordance with Article XX of Chapter 10 of the
9 San Francisco Administrative Code (commencing with Section 10.230).

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11 ~~SEC. 456.5. BOARD REVIEW HEARING.~~

12 ~~A Committee of the Board of Supervisors shall hold a hearing concerning the implementation of~~
13 ~~Section 456 et seq. before July 1, 2005.~~

14 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended by
15 amending Section 249.1, to read as follows

16 **SEC. 249.1. FOOD PREPARATION AND SERVICE ESTABLISHMENTS.**

17 Every person, firm or corporation engaged in the business of operating food
18 preparation and service establishments, as defined in Section 451 of the San Francisco
19 Health Code, that require permits from the Health Department shall pay an annual license fee
20 to the Tax Collector as follows:

21 (a) Class Fee

22 Class A. Food preparation and service establishments with a total square footage of:

23 Less than 1,000 square feet . . . \$627

24 1,000 square feet to 2,000 square feet . . . 829

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1 Greater than 2,000 square feet . . . 951

2 Class B. Bar or tavern . . . 744

3 Class C. Take-out establishment . . . 752

4 Class D. Fast food establishment . . . 852

5 Class E. Catering facility . . . 732

6 Class F. Temporary facility . . . 117

7 Class G. Food demonstrations . . . 105

8 Class H. Commissary . . . 713

9 Class I. Pushcart on private property . . . 594

10 Class J. Stadium concession . . . 504

11 Class K. Vending machines . . . 143

12 Class L. Bed and breakfast establishment . . . 806

13 Class M. Boarding house . . . 194

14 Class N. Private school cafeteria . . . 237

15 Class O. Hospital kitchen, *with food service to the general public and staff only* . . . 758

16 Class P. Licensed Health Care Facility . . . 1050

17 The license fees prescribed in this Section are due and payable on an annual basis
 18 commencing April 1, 1984. Fees for new licenses issued prior to, or after April 1st, shall be
 19 prorated on a monthly basis.

20 (b) Exemptions. The following establishments are exempt from paying the fees
 21 required by this Section:

22 (1) Food preparation and service establishments used exclusively by day care facilities for
 23 children are exempt from paying the fees required by this Section.

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1 For the purpose of this subsection, a "day care facility for children" shall mean a "community
2 care facility" licensed pursuant to the provisions of Chapter 3, Division 2 of the California
3 Health and Safety Code (commencing at Section 1500) which provides nonmedical care to
4 children in need of personal services, supervision, or assistance essential for sustaining the
5 activities of daily living or for the protection of the individual on less than a 24-hour basis, or a
6 "family day care home for children" licensed pursuant to the provisions of Chapter 3.6,
7 Division 2 of the California Health and Safety Code (commencing at Section 1597.50).

8 (2) Food preparation and service establishments funded through the San Francisco
9 Commission on Aging for nutrition projects for older individuals.

10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: _____
13 Cecilia T. Mangoba
14 Deputy City Attorney

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